

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service Support)	

**Further Notice of Proposed Rulemaking Concerning Issues Raised by the
February 23, 2005, United States Court of Appeals for the Tenth Circuit in the
Qwest II Decision**

Comments of the Wyoming Public Service Commission

January 28, 2010

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INTRODUCTION

The Wyoming Public Service Commission (WyPSC) submits these initial comments in the matter of the Federal Communications Commission's (FCC) December 15, 2009, further notice of proposed rulemaking (FNPRM) concerning the remands by the United States Court of Appeals for the Tenth Circuit (Tenth Circuit or the Court) in *Qwest I* and *Qwest II*.¹ In accordance with the FCC's March 6, 2009, response to the Tenth Circuit, the WyPSC anticipates a final FCC order by April 16, 2010.

In 2009 the WyPSC joined in filing a petition for a writ of mandamus in the Tenth Circuit to require the FCC to define sufficiency and comparability in accordance with the principles of §254(b) of the Telecommunications Act of 1996 (or the Act) within 90 days.² Citing changes in leadership, on February 19, 2009, the FCC asked the Tenth Circuit for more time, seeking an extension of the response deadline to March 6, 2009.³ To resolve the mandamus proceeding, the FCC responded to the Tenth Circuit on March 6, 2009:

The FCC has now agreed to complete this proceeding as follows.

In order to refresh the record compiled in response to the 2005 NPRM, the Commission will release a notice of inquiry no later than April 8, 2009. It will then issue a further NPRM no later than December 15, 2009. After the Commission receives and reviews the comments submitted in response to the further NPRM, it will release a final order that responds to this Court's remand no later than April 16, 2010.⁴

The Tenth Circuit responded, stating:

Petitioners have filed a petition for a writ of mandamus to compel agency action by the Federal Communications Commission (FCC). The FCC has responded, indicating that

¹ *Qwest Corp. v. FCC*, 258 F.3d 1191 (2001) (*Qwest I*) and *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005) (*Qwest II*).

² IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, In re QWEST CORPORATION, MAINE PUBLIC UTILITIES COMMISSION, VERMONT PUBLIC SERVICE BOARD, AND WYOMING PUBLIC SERVICE COMMISSION, Petitioners. PETITION FOR A WRIT OF MANDAMUS TO THE FEDERAL COMMUNICATIONS COMMISSION, Docket No. 09-9502, (*Joint Petition for Writ of Mandamus*).

³ IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, In re QWEST CORPORATION, MAINE PUBLIC UTILITIES COMMISSION, VERMONT PUBLIC SERVICE BOARD, AND WYOMING PUBLIC SERVICE COMMISSION, Petitioners. PETITION FOR A WRIT OF MANDAMUS TO THE FEDERAL COMMUNICATIONS COMMISSION, Docket No. 09-9502, FCC CONSENT MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO MANDAMUS PETITION, February 9, 2009.

⁴ RESPONSE OF FEDERAL COMMUNICATIONS COMMISSION TO PETITION FOR WRIT OF MANDAMUS, IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, In re QWEST CORPORATION, MAINE PUBLIC UTILITIES COMMISSION, VERMONT PUBLIC SERVICE BOARD, AND WYOMING PUBLIC SERVICE COMMISSION, Petitioners. PETITION FOR A WRIT OF MANDAMUS TO THE FEDERAL COMMUNICATIONS COMMISSION, Docket No. 09-9502, March 6, 2009.

the FCC and petitioners have agreed on a timetable for the FCC to take action. [Footnote omitted] Accordingly, the FCC and petitioners agree that no writ of mandamus need issue at this time.

Petitioners, however, have requested that this court retain jurisdiction over this matter to ensure the FCC's compliance with the agreed timetable. We decline the request to retain jurisdiction, but petitioners shall be free to re-file a petition if the FCC fails to meet its deadlines or petitioners otherwise believe they are entitled to relief.⁵

The WyPSC hopes the FCC will set forth revised rules providing for a high-cost universal service fund that is sufficient to promote reasonable comparability of rural rates in Wyoming with the FCC's nationwide weighted average urban rate in accordance with the principles of section 254(b)(3) of the Act. With background discussion and analysis of the current regime for federal universal service for non-rural carriers,⁶ these comments respond to the FCC's FNPRM.

SUMMARY

To provide sufficient universal service support that will allow for reasonable rural/urban rate comparability and correct the FCC's unlawful current regime, the WyPSC recommends a new funding benchmark of 125% of nationwide average cost for uniquely high cost rural universal service for non-rural carriers. "Although called "non-rural," many of these larger carriers actually serve the most rural areas in our states."⁷ To target additional funding and avoid unnecessary increases to the overall size of the universal service fund, the WyPSC suggests that the new funding benchmark of 125% be applied only where high-cost factors such as sparse local loop density are extreme.

⁵ Order, United States Court of Appeals for the Tenth Circuit, QWEST CORPORATION; MAINE PUBLIC UTILITIES COMMISSION; VERMONT PUBLIC SERVICE BOARD; WYOMING PUBLIC SERVICE COMMISSION, Petitioners, v. FEDERAL COMMUNICATIONS COMMISSION, Respondent. Docket No. 09-9502, March 20, 2009, pp. 1-2.

⁶ Non-rural carrier means a carrier that is not a "rural telephone company." Pursuant to 47 U.S.C. §153, "rural telephone company" means "a local exchange carrier operating entity to the extent that such entity: (A) provides common carrier service to any local exchange carrier study area that does not include either (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993; (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."

⁷ March 19, 2007, letters to Chairman Kevin J. Martin from the Vermont Public Service Board, the Vermont Department of Public Service, the South Dakota Public Utilities Commission, the Kentucky Public Service Commission, the Montana Public Service Commission, the Nebraska Public Service Commission, the Wyoming Public Service Commission, and the Maine Public Utilities Commission urging the FCC to resolve these issues expeditiously.

In the *Ninth Report and Order* the FCC set a funding benchmark of 135% of average cost.⁸ In the *Order on Remand*, the FCC modified its non-rural, high-cost support mechanism. To determine eligibility and the amount of support that non-rural carriers in each state will receive, the FCC established a cost benchmark of two standard deviations above the national average cost per line.⁹ Referring to USAC data presented in **Table 1** below, USAC estimates the average cost is \$21.43, and two standard deviations above that is the funding benchmark of \$28.13, (131% of the nationwide weighted average). Non-rural carriers in states with average costs exceeding the national average plus two standard deviations are eligible for support under the current mechanism.

Others have already questioned the appropriateness of the benchmarks that the FCC has tried. For example:

Commissioner Copps: “I do not find adequate evidence in the record to demonstrate that a rural rate for telephone service that is 135% higher than the average urban rate in this country is necessarily or reasonably comparable.”¹⁰

Commissioner Martin: “. . . the decision sidesteps the question of whether the benchmark produces sufficient support in light of the existing disparity between national average cost and the lower urban cost.”¹¹

Commissioner Rowe: “For these reasons, I conclude that the existing system, based on a benchmark of 135 percent, does not meet the requirements of the statute.”¹²

We also believe the current funding benchmark of average cost plus two standard deviations fails to satisfy the requirements for providing a fund sufficient to ensure reasonable comparability of rural and urban rates. In *Qwest II*, the Tenth Circuit found that the FCC had adopted a “faulty, and indeed largely unsupported construction of the Act” that is “manifestly contrary to the statute.”¹³ We are disappointed that the FCC has continued to fail to provide any empirical analysis to justify its unlawful regime, and we think that the Tenth Circuit would be disappointed as well.¹⁴

Our proposal for a 125% funding benchmark for uniquely high cost rural universal service situations is meant to ensure sufficient funding for situations where the non-rural carrier provides service in a state with less than ten persons per square mile as

⁸ Ninth Report and Order and Eighteenth Order on Reconsideration, *Federal-State Joint Board on Universal Service*, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*)

⁹ FCC 03-249, CC Docket No. 96-45 (October 27, 2003) (*Order on Remand*) ¶ 49.

¹⁰ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 02J-2 (released October 16, 2002) Separate Statement of FCC Commissioner Copps

¹¹ Id, Separate Statement of FCC Commissioner Martin

¹² Id, Separate Statement of Commissioner Rowe

¹³ *Qwest II* at 1235.

¹⁴ “. . . the FCC based the two standard deviations cost benchmark on a finding that rates were reasonably comparable, without empirically demonstrating a relationship between the costs and rates surveyed in this context.” *Qwest II*, p. 25

measured by the US Census. To address concerns about the size of the universal service fund, the WyPSC would also suggest that competitive eligible telecommunications carriers (CETCs) should not receive extra support under this proposal because the FCC has already capped CETC support.

Our comments address the following key points, among others:

- The size of the fund should have no bearing on the definition of the comparability of rates. The FCC should determine the comparability issue, and if the FCC finds that the fund is too large to be supported or sustained, further examination should be made.
- The federal funding benchmark should recognize the inability of some states to adequately fund intrastate comparability.
- The FCC's proposal to further delay instituting a regime that will promote reasonably comparable rural/urban rates while it stretches to create a national broadband policy is unacceptable.
- Providing broadband universal service in sparsely populated high-cost areas may be almost impossibly expensive.
- Basic universal service in high-cost sparsely populated rural areas is not a rapidly obsolescing business model.

BACKGROUND

The WyPSC has undertaken significant effort to encourage the FCC to expand federal universal service support for customers served by Wyoming's non-rural carrier, Qwest Corporation (Qwest). In 2008 the WyPSC joined a petition for a writ of mandamus in the Tenth Circuit to require the FCC to define sufficiency and reasonable comparability in accordance with the principles of §254(b) of the Act.

The Ninth Report and Order and Qwest I

The Tenth Circuit summarized the background concerning the FCC's *Ninth Report and Order* and *Qwest I* in *Qwest II*. To explain this background, we present text from pages 6-9 of *Qwest II* below:

In *Qwest I* we reversed and remanded the FCC's Ninth Report and Order, FCC 99-306, CC Docket No. 96-45 (Nov. 2, 1999) ("Ninth Order"). 258 F.3d at 1205. The Ninth Order finalized the FCC's funding mechanism for non-rural telecommunications carriers in high-cost areas. Rural carriers serve only rural areas or are small in size. *Id.* at 1196. In contrast, non-rural carriers are larger and serve some urban areas. *Id.* To achieve rate comparability, the FCC based its support mechanism on forward-looking costs per line. *Id.* at 1197. The FCC found that costs, as opposed to rates, were a better indicator of comparability. *Id.* First, the FCC set a benchmark of 135% of the national average cost per line. *Id.* The FCC then determined carrier eligibility by comparing individual state average costs per line to the federal benchmark. *Id.* Non-rural carriers in states with average costs exceeding the national benchmark were eligible for support. The FCC further conditioned support on state certification that an eligible non-rural carrier would use the federal funds in compliance with 47 U.S.C. § 254(e) (mandating that federal

funds only be used “for the provision, maintenance, and upgrading of facilities and services for which the support is intended”). Id. at 1198.

We predicated our decision in *Qwest I* on a finding that the FCC had failed to “provide sufficient reasoning or record evidence to support [the Ninth Order’s] reasonableness.” Id. at 1195. First, we held that the FCC had failed to adequately define key statutory terms, including “reasonably comparable” and “sufficient.” Id. at 1201. In so doing, we expressed concern regarding the alleged variance in rates encompassed by the FCC’s national cost benchmark. Id. Second, we held that the FCC had likewise failed to justify the 135% benchmark against the statutory goals of reasonable comparability and sufficiency. Id. at 1202. While rejecting the argument that the use of statewide and national averages is inconsistent with the statutory mandate, Id. n.9, we noted that the FCC had failed to evaluate data in the record comparing rural and urban costs under the proposed funding mechanism and had not provided a cogent explanation for its choice of 135% as the benchmark figure. Id. at 1202. Third, we found that the Ninth Order provided no mechanisms to induce states to implement their own universal service programs; this despite the fact that the FCC itself acknowledged that the support provided by the Ninth Order could not result in reasonably comparable rates absent state action. Id. at 1203-04. Finally, we noted that the FCC had provided insufficient information concerning the full extent of federal universal service support. Id. at 1204-05. Lacking this global context, we could not proceed in assessing the reasonableness of the Commission’s actions. Id. at 1205.

In remanding the Ninth Order, we required the FCC to take the following actions. First, we directed the Commission to define relevant statutory terms “more precisely in a way that can be reasonably related to the statutory principles, and then to assess whether its funding mechanism will be sufficient for the principle of making rural and urban rates reasonably comparable.” Id. at 1202. Second, we required the FCC to “provide adequate record support and reasoning for whatever level of support it ultimately selects upon remand.” Id. at 1203. Third, we held that the FCC was required on remand “to develop mechanisms to induce adequate state action” to assist in implementing the goals of universal service. Id. at 1204. Finally, we requested that the FCC “explain further its complete plan for supporting universal service.” Id. at 1205.

B. The Order on Remand

The FCC responded to our opinion in its Order on Remand, FCC 03-249, CC Docket No. 96-45 (October 27, 2003) (“Order on Remand”). The Commission first sought to address our concerns with respect to the definitions of statutory terms. The FCC defined “sufficient” as “enough federal support to enable states to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers.” Order on Remand ¶ 4. The Commission then defined “reasonably comparable” in terms of a national urban rate benchmark, i.e., rural rates are deemed reasonably comparable if they fall within two standard deviations, or roughly 138%, of the national urban average. Id. ¶ 38 n.130.

The Order on Remand contains the FCC’s revised federal support mechanism for non-rural carriers in high-cost areas. To gauge whether current support mechanisms result in reasonably comparable rates, the Order on Remand requires states to regularly compare individual rural rates with the national average urban rate benchmark referenced above. Id. ¶ 70. The states must annually certify to the FCC whether their rural rates are reasonably comparable. Id. The benchmark represents a safe harbor, i.e., rates falling within the benchmark are presumed reasonably comparable. Id. However, states have the option to present additional information that other factors impact the comparability of their rates in high cost areas. Id. ¶ 70, 73. Importantly, non-rural carriers’ eligibility for federal support is dependent on effective state certification. Id. ¶ 92. To determine the level of support, the FCC then compares the statewide average cost per line against a national average cost per line. Id. ¶¶ 49-50. Support is only available if the state’s average exceeds the national average plus two standard deviations. Id. ¶ 64. Thus, the Order on Remand actually contains two separate benchmarks: a national average urban

rate benchmark is used to determine whether rates are reasonably comparable and a national cost benchmark is used to determine the availability and amount of federal support.¹⁵

Qwest II

In *Qwest II* the Tenth Circuit held that:

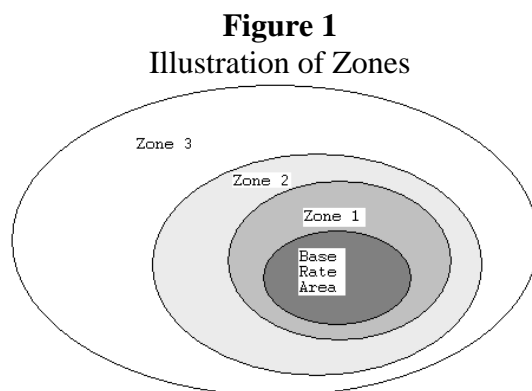
The FCC relied on an erroneous, or incomplete, construction of 47 U.S.C. § 254 in defining statutory terms and crafting the funding mechanism for non-rural, high-cost support. That construction of the statute is fatal to the cost support mechanism at issue in this case.¹⁶

Wyoming Effort

The WyPSC has taken an active role on the issues of sufficiency and rural/urban rate comparability, encouraging the FCC to expand federal universal service support for Qwest's rural high cost customers in Wyoming for almost a decade. The timeline in **Appendix A** summarizes that procedural history, including dozens of filings and meetings where WyPSC representatives have travelled at significant expense to Washington, D.C. to meet with FCC commissioners and staff.

Distribution of Support by Zone

In 2001, the FCC approved the WyPSC's petition for a waiver of the FCC's requirements for targeting federal support in order to direct non-rural HCMS to retail and unbundled network element (UNE) rate zones.¹⁷ As set forth in the petition at page 2, Wyoming's zones are based on four geographic areas – Base Rate Area, Zone One, Zone Two and Zone Three. **Figure 1** illustrates the zone concept.



¹⁵ *Qwest II*, pp. 6-9

¹⁶ *Qwest II*, p. 4

¹⁷ In the Matter of Wyoming Public Service Commission Petition filed on March 31, 2000, for Waiver of Targeting Requirements Found in Sections 54.309 and 54.311 of the Commission's Rules, CC Docket No. 96-45, DA 01-612, Released March 9, 2001.

The Base Rate Area contains the highest density of access lines per square mile and Zone Three contains the lowest density of access lines per square mile. The four rate zones currently form the basis for UNE prices and retail rates for Qwest. Under this methodology, federal and state support is not provided in urban areas. The WyPSC requires Qwest to credit all of its federal high cost support to subscriber's bills only in rural high cost Zones One, Two and Three. None of Qwest's federal support is credited to lines in relatively urban base rate areas such as our larger cities. For example, customers in Casper, population 49,644 and Cheyenne, population 53,011, do not receive federal universal service credits.

Petition for Supplemental Funding

Pursuant to the FCC's decision and direction provided in the *Order on Remand*, in December 2004, the WyPSC and the Wyoming Office of Consumer Advocate (OCA) filed a joint petition for supplemental federal universal service funds for customers of Wyoming's non-rural incumbent local exchange carrier, Qwest. In its *Order on Remand*, the FCC, addressed the FCC's adoption of the recommendation by the Federal-State Joint Board on Universal Service (Joint Board) "to permit states to request further federal action, if necessary, based on a demonstration that the state's rates in rural, high-cost areas served by non-rural carriers are not reasonably comparable to urban rates nationwide"¹⁸ with the burden on the state to show that it "has taken all reasonable steps to achieve reasonable comparability through state action and existing federal support."¹⁹

In response to the joint petition, the FCC issued a public notice, DA 05-412, on February 14, 2005, requesting comments by March 7, 2005, and reply comments by March 21, 2005. Maine, Vermont, Montana (States Coalition) and the National Association of Consumer Advocates (NASUCA) all filed supportive comments. The States Coalition said on page 5:

Qwest II also provides ample reason for prompt action. It has now been nine years since Congress stated that customers in rural areas are entitled to have rates that are reasonably comparable to urban areas. More than two years have passed between the court's decision in *Qwest I* and the Commission's Ninth Report Remand Order, which was issued in late 2003. The fourth anniversary of *Qwest I* now approaches, and still the Commission has not demonstrably provided sufficient support to the customers of nonrural companies. While the issues presented on remand to the Commission are undoubtedly complex, this petition offers an immediate opportunity to provide relief to the ratepayers of high cost nonrural carriers, even while it considers additional responses to *Qwest II*.

NASUCA commented on pages 3 and 4:

Qwest II invalidated the benchmark, but upheld the state certification process, including the process by which additional federal support is requested. The Tenth Circuit invalidated the two standard deviation benchmark because that benchmark was too high,

¹⁸ Page 5

¹⁹ Id.

and would not support enough customers' rates. Any support granted Wyoming based on a lower benchmark would likely be greater than that granted under the two standard deviation benchmark, unless radical changes are made to the process.

Thus it makes sense to proceed with addressing the Joint Wyoming Petition, to establish, in this fairly clear instance, standards for addressing future applications under the benchmark ultimately selected. Wyoming has shown that supplemental federal funds are needed to produce rates for Qwest that are reasonably comparable to urban rates, even using the high two standard deviation benchmark...[Footnotes omitted.]

After more than five years, the FCC has not acted on the 2004 joint petition for supplemental funding by the WyPSC and OCA.

Rate Comparability

Section 254(b)(3) of the Act provides that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

Rate comparability review and certification for areas served by non-rural carriers under 47 C.F.R. § 54.316 requires state commissions to annually review the comparability of residential rates in rural areas of the state served by non-rural incumbent local exchange carriers to urban rates nationwide. Qwest (Study Area Code 515108) is the only non-rural incumbent local exchange carrier in Wyoming. Qwest also serves in rural areas of the state. 47 C.F.R. § 54.316 also requires certification whether rates are reasonably comparable pursuant to the universal service principles set forth in section 254(b)(3) of the Act.

Rate review and certification is performed pursuant to the FCC's expanded certification process contained in the *Order on Remand*. The nationwide urban rate benchmark equals the most recent weighted average urban rate plus two standard deviations. The weighted average urban rate and standard deviation are found in the most recent *Reference Book of Rates, Price Indices, and Expenditures for Telephone Service* (Reference Book) published by the Wireline Competition Bureau of the FCC.

The WyPSC annually submits, pursuant to 47 C.F.R. § 54.316, its residential rate comparability certification to the FCC and the Universal Service Administrative Company (USAC). **Table 1** presents the WyPSC's September 18, 2009, certification of residential rural rates for the non-rural carrier in Wyoming. **Table 1** presents, in detail, the residential rate data for the most rural areas (Zone One) within Wyoming. **Table 1** shows rural residential customers in Zone 3 served by Qwest pay a monthly rate of \$46.37. **Table 1** shows rural Zone 3 residential customers served by the Wyoming non-rural incumbent local exchange carrier pay a monthly rate of \$46.37, or 164 percent (164%) of the nationwide urban rate benchmark plus two standard deviations (\$28.13). Because of the manner in which federal and state support is targeted, residential customers located in rural Zone One and rural Zone Two pay \$46.06 and \$46.16 respectively. One hundred

percent (100%) of the federal high cost support received by Qwest in Wyoming is reflected as an explicit bill credit to its rural customers in Zones One, Two, and Three. Based on these facts, the methods in which the average urban rate was calculated and the rate comparison requirements of the *Order on Remand*, the WyPSC concludes that its rural residential rates are not reasonably comparable to the nationwide urban rate benchmark. Another factor influencing the rate comparison is the continued presence of substantial amounts of implicit subsidies in local rates constituting the average urban rate and the nationwide urban rate benchmark.

Table 1

Wyoming Rural Residential Rate Computation, Current Rate

Rate, Surcharges, Credits and Taxes as of July 2009:

Basic Residential Access Line Rate*	\$69.35
Federal Universal Service Fund Credit**	(\$31.92)
Wyoming Universal Service Fund Credit+	(\$ 4.86)
Net Residential Rate Subject to Mandatory Surcharges and Taxes	\$32.57
Federal Subscriber Line Charge	\$ 6.50
Federal Universal Service Fund Surcharge	\$ 3.51
Wyoming Universal Service Fund Surcharge+ +	\$ 0.69
Telecommunications Relay System Surcharge	\$ 0.06
Wyoming Lifeline Program Surcharge	\$ 0.00
E911 Emergency Calling System Tax	\$ 0.75
Federal Excise Tax	\$ 1.05
Wyoming State Sales Tax	<u>\$ 1.68</u>
Total Basic Residential Service Rate to Customer	\$46.37

***ILEC rates in Wyoming are set equal to TSLRIC.**

**** Qwest must credit essential lines for all HCM support it receives
+, ++ Wyoming has had a pro-competitive state USF since 1995**

For several reasons Wyoming's non-rural carrier rural residential rates are not reasonably comparable, with the main factor being that Wyoming has cost-based rates for its rural areas (a fact recognized several times in the *Order on Remand*).²⁰ The WyPSC has fully implemented the pro-competitive statutory mandates of the Wyoming Telecommunications Act of 1995 (W.S. §§ 37-15-101, *et seq.*). Qwest now has in place

²⁰ "For example, because Wyoming, unlike many other states, has rebalanced its single-line business rates to levels equivalent to residential rates, Wyoming's residential rates no longer rely on implicit support flows from its business rates, and its business customers pay lower rates than they would in a state that relied on such implicit support flows." *Order on Remand* ¶110

de-averaged cost-based residential rates with all implicit subsidies removed from residential rates and the WyPSC has fully implemented the explicit subsidy support program – the Wyoming Universal Service Fund (WUSF). The residential rate shown on **Table 2** reflects the truly high cost, rural nature of much of Wyoming. Qwest rates in Wyoming are without implicit subsidies, are de-averaged and are cost-based. Our conclusions therefore remain correct and the disparity described above remains accurate.

Another important factor is Wyoming's low population density. Wyoming is the least populated and second least densely populated state. It had only 522,830 people in 2007, less than 5.4 persons per square mile. Almost 45% of the population lives in the ten largest cities, only two of which are about 50,000 people in size. Visitors otherwise commonly find small communities where railroads and highways intersect. About half of Wyoming is federal land, and most of that land is uninhabited – national forests, national parks, wilderness, and grasslands. Many Wyomingites live miles from the nearest town.

Fewer homes in large areas result in low local line density, which is a controlling factor in the economics (high total element long run incremental and fixed costs) of providing universal service in Wyoming. For example, Qwest's wire center in Lusk, Wyoming has a serving area nearly three times larger than the entire state of Rhode Island.²¹ Local loop density in Niobrara County is less than one access line per square mile.²² By contrast, within the Washington, D.C. city limits there are approximately 10,000 access lines per square mile.²³ Factoring in rugged terrain and extreme weather conditions, this means that the cost of service is high, and it is expensive to provide universal service to many areas of Wyoming.

Wyoming Universal Service Fund

W.S. § 37-15-501 established the WUSF. Qwest now has in place de-averaged cost-based residential rates with all implicit subsidies removed from residential rates and the WYPSC has fully implemented the explicit subsidy support program – the WUSF. The WUSF supports local exchange services priced above 130% of the weighted statewide average rate, after recognition of federal universal service support. For the 2009 – 2010 funding year support is provided for services priced above \$32.57 **after crediting all per line federal support.**

One hundred percent (100%) of the federal high cost support received by Qwest in Wyoming is reflected as an explicit and direct bill credit to its rural customers in Zones One, Two and, Three. The institution of Wyoming's workable, viable, explicit state universal service fund meets the Tenth Circuit's requirements given to the FCC in *Qwest*

²¹ Davis, Robert Steven, Senior Vice President Public Policy and Government Relations, Qwest Communications, International, Inc., Testimony before the US House Committee on Energy and Commerce - Subcommittee on Communications, Technology, and the Internet. Hearing on the Universal Service Fund. March 12, 2009. Page 3.

²² Id.

²³ Id.

*I to induce the states “to assist in implementing the goals of universal service.”*²⁴ Wyoming rural customers are engaged in self-help because their state universal service fund assessment is based on their gross rate, rather than their rate net of federal assistance. Thus, rural Wyoming customers served in non-rural carrier areas already pay more for their portion of the state fund, adding to the burden that they already bear for having some of the highest rates in the United States. Plus, they still pay their full share of federal universal service contribution.²⁵

Annual Eligible Telecommunications Carrier (ETC) Certification

The WyPSC submits annually, pursuant to 47 C.F.R. § 54.313, its annual certification to the FCC and USAC. 47 C.F.R. § 54.313 requires the appropriate state regulatory authority to annually certify those non-rural incumbent local exchange carriers and CETCs serving lines in the areas of non-rural incumbent local exchange carriers within their jurisdiction for purposes of receiving federal universal service support.

On February 25, 2005, the FCC, in CC Docket 96-45, FCC 05-46, adopted new federal rules and established new federal guidelines for the ETC designation and annual certification process. The new rules implemented many of the ETC designation and annual certification recommendations made by the Joint Board in 2004.²⁶ The new rules became effective June 25, 2005, and state commissions were encouraged by the FCC to adopt similar measures and standards at the state level. In response, the WyPSC adopted annual reporting requirements for previously designated ETCs in Wyoming similar to those adopted by the FCC at the federal level. All Wyoming ETCs are subject to these additional reporting requirements for annual certification process required to be conducted by the WyPSC pursuant to 47 C.F.R. §§ 54.313 and 54.314.

The WyPSC does its homework carefully and responsibly each year to certify ETCs, following the guidelines established by the FCC and augmenting its analysis with additional information that is collected from each ETC. We think this is very important work because we realize that all ratepayers across the US are the contributors and we see the annual ETC certification process as vital to the success of universal service.

Appendix B is a letter (PSC Letter Number 09-155) sent to each ETC subject to WyPSC jurisdiction in 2009. This letter and its attachments describe the requirements and responsibilities placed upon the WyPSC in conducting the annual certification process for each previously designated ETC within Wyoming. Note that to prove that

²⁴ 258 F.3d at 1204

²⁵ See Joint Petition of the Wyoming Public Service Commission and the Wyoming Office of Consumer Advocate for Supplemental Federal Service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier, In the Matter of Federal-State Joint Board on Universal Service, FCC Docket No. CC 96-45, submitted December 21, 2004. Page 8.

²⁶ See Federal- State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 04- J1 (2004) (Recommended Decision).

ETCs are using federal support wisely and responsibly, ETCs are required to provide detailed information about specific projects in high-cost areas where federal high cost funds were used for the provision, maintenance and advancement of supported services.

WyPSC Rule ¶514 gives each carrier the opportunity to verify that it continues to offer the nine supported services and functionalities required for designation as an ETC under the Act and the Code of Federal Regulations, throughout its designated service areas within Wyoming. The WyPSC also obtains from its jurisdictional non-rural incumbent local exchange carrier (Qwest) and CETCs serving lines in the areas of non-rural incumbent local exchange carriers their respective signed affidavits setting forth how federal universal service support funds have been used, and how the money will be used during the applicable 12-month period for which support funds are being requested. Additionally, the data provided by each applicant is the subject of careful staff analysis and hearings before the WyPSC. The respective affidavits, additional documentation and detailed support from each ETC jurisdictional to the WyPSC are made available upon request.

ANALYSIS

Wyoming's Proposal

In its May and June comments on the NOI earlier this year the WyPSC recommended a new two-step funding benchmark process to identify uniquely high cost rural universal service for non-rural carriers using a statistic such as route miles per subscriber which might be a statistic that is available from the HCPM, and then a lower funding benchmark of 125% for uniquely high cost rural universal service for non rural carriers. During our staff's December 9, 2009, ex parte conversation with FCC staff, Ms. Katie King of the Wireline Competition Bureau informed our staff that route miles per subscriber is not a statistic that is available from the FCC's cost model, HCPM. Therefore the WyPSC recommends that a perfectly fine statistic to measure a non-rural carrier's eligibility for a lower funding benchmark of 125% would be US Census Bureau data identifying states with population densities of less than ten persons per square mile.

Estimated Impact of Wyoming's Proposal

USAC estimates that the entire federal universal service program in 2008 amounted to about \$7.1 billion, which USAC tallied up as follows:²⁷

High Cost:	\$4.48 billion
Low Income:	\$819 million
Rural Health Care:	\$49.5 million (Funding Year 2008)
Schools & Libraries:	\$1.8 billion (Funding Year 2008)

²⁷ <http://www.usac.org/about/universal-service/fund-facts/fund-facts.aspx> Visited January 26, 2010.

We have done a rough estimate of the impact on the fund if our proposal were adopted, using the detailed statistical information about the universal service fund that is available on the USAC Web site. USAC explains about high cost support as follows:

The High Cost Program of the Universal Service Fund, which is administered by the Universal Service Administrative Company (USAC), ensures that consumers in all regions of the nation have access to and pay rates for telecommunications services that are **reasonably comparable** to those services provided and rates paid in urban areas.

Without High Cost support, residents of some areas of the country would have to pay significantly more for telephone services than those living in other areas because of factors such as **dense terrain, low populations, or the high fixed costs of building a telecom network**.

USAC is responsible for data collection and maintenance, support calculation, and disbursement for the five components of High Cost Program support that provides over **\$4 billion** per year to telecommunications carriers throughout all states and U.S. territories. Currently, over 1,700 eligible telecommunications carriers receive High Cost support.²⁸ (emphasis added)

The Universal Service Monitoring Report, (*Monitoring Report*) CC Docket No. 98-201, prepared by the federal and state staff for the Joint Board in CC Docket No. 96-45, provides additional important information about the non-rural high-cost fund:

The high-cost support mechanisms enable areas with very high costs to recover some of these costs from the federal universal service fund, leaving a **smaller remainder** of the costs to be recovered through end-user rates or state universal service support mechanisms. In this manner, the high-cost support mechanisms are intended to hold down rates and thereby further one of the most important goals of federal and state regulation -- the preservation and advancement of universal telephone service.²⁹ (emphasis added)

The *Monitoring Report* explains that the non-rural high-cost support mechanism is called forward-looking non-rural high-cost model support (HCMS).³⁰

Appendix HC16 - High Cost Model Support Projected by State - 1Q2010, from USAC, is our starting point in the analysis and is replicated below in **Table 2**.³¹

²⁸ <http://www.usac.org/hc/about/default.aspx> Visited January 20, 2010.

²⁹ <http://www.fcc.gov/wcb/iatd/monitor.html> Section 3, page 3-1. Visited January 20, 2010.

³⁰ Id.

³¹ <http://www.usac.org/about/governance/fcc-filings/2010> Visited December 16, 2009.

Table 2
High Cost Model Support Projected by State - 1Q2010

Summary of Cost Data					Support - by state		
					Federal Pay %		76%
State	Total Annual Cost	Model Switched Lines	State Avg. Cost	Reported Switched Lines	\$ /Line / Mo.	Monthly Support	Annual Support
AK	\$ 32,254,836	\$ 132,711	\$ 20.25	84,668	\$ -	\$ -	\$ -
AL	\$ 783,130,623	\$ 2,161,086	\$ 30.20	2,705,998	\$ 1.57	\$ 4,256,010	\$ 51,072,123
AR	\$ 307,999,804	\$ 962,186	\$ 26.68	683,000	\$ -	\$ -	\$ -
AZ	\$ 678,157,919	\$ 2,704,759	\$ 20.89	1,619,863	\$ -	\$ -	\$ -
CA	\$ 4,667,045,617	\$ 22,313,850	\$ 17.43	15,903,265	\$ -	\$ -	\$ -
CO	\$ 744,711,417	\$ 2,667,781	\$ 23.26	1,737,291	\$ -	\$ -	\$ -
CT	\$ 607,922,247	\$ 2,297,124	\$ 22.05	1,470,909	\$ -	\$ -	\$ -
DC	\$ 160,599,478	\$ 897,188	\$ 14.92	591,336	\$ -	\$ -	\$ -
DE	\$ 137,063,794	\$ 580,546	\$ 19.67	389,045	\$ -	\$ -	\$ -
FL	\$ 2,076,135,956	\$ 8,705,114	\$ 19.87	5,503,317	\$ -	\$ -	\$ -
GA	\$ 1,065,618,048	\$ 4,030,911	\$ 22.03	2,632,428	\$ -	\$ -	\$ -
HI	\$ 164,398,950	\$ 702,087	\$ 19.51	477,673	\$ -	\$ -	\$ -
IA	\$ 310,918,410	\$ 1,071,133	\$ 24.19	712,498	\$ -	\$ -	\$ -
ID	\$ 163,101,114	\$ 510,080	\$ 26.65	371,624	\$ -	\$ -	\$ -
IL	\$ 1,852,448,429	\$ 7,501,460	\$ 20.58	4,999,499	\$ -	\$ -	\$ -
IN	\$ 931,775,380	\$ 3,267,591	\$ 23.76	2,192,432	\$ -	\$ -	\$ -
KS	\$ 362,115,644	\$ 1,297,956	\$ 23.25	769,246	\$ -	\$ -	\$ -
KY	\$ 647,418,090	\$ 1,853,294	\$ 29.11	1,714,605	\$ 0.75	\$ 1,280,211	\$ 15,362,536
LA	\$ 695,274,935	\$ 2,302,566	\$ 25.16	1,505,618	\$ -	\$ -	\$ -
MA	\$ 944,467,759	\$ 4,161,973	\$ 18.91	2,610,643	\$ -	\$ -	\$ -
MD	\$ 867,375,183	\$ 3,835,914	\$ 18.84	2,630,550	\$ -	\$ -	\$ -
ME	\$ 240,961,022	\$ 706,507	\$ 28.42	690,965	\$ 0.22	\$ 151,068	\$ 1,812,815
MI	\$ 1,662,050,089	\$ 5,988,602	\$ 23.13	3,272,721	\$ -	\$ -	\$ -
MN	\$ 563,610,881	\$ 2,061,041	\$ 22.79	1,342,642	\$ -	\$ -	\$ -
MO	\$ 820,992,714	\$ 2,906,689	\$ 23.54	2,013,348	\$ -	\$ -	\$ -
MS	\$ 573,521,648	\$ 1,311,948	\$ 36.43	2,787,545	\$ 6.31	\$ 17,585,287	\$ 211,023,445
MT	\$ 146,314,393	\$ 364,022	\$ 33.49	378,955	\$ 4.08	\$ 1,545,483	\$ 18,545,796
NC	\$ 809,827,032	\$ 2,936,146	\$ 22.98	1,789,556	\$ -	\$ -	\$ -
ND	\$ 69,148,452	\$ 230,385	\$ 25.01	143,713	\$ -	\$ -	\$ -
NE	\$ 252,415,269	\$ 717,869	\$ 29.30	1,019,793	\$ 0.89	\$ 908,928	\$ 10,907,142
NH	\$ 215,407,013	\$ 751,019	\$ 23.90	468,098	\$ -	\$ -	\$ -
NJ	\$ 1,370,153,458	\$ 6,294,582	\$ 18.14	3,733,377	\$ -	\$ -	\$ -
NM	\$ 257,567,235	\$ 840,461	\$ 25.54	609,195	\$ -	\$ -	\$ -
NV	\$ 283,004,682	\$ 1,227,810	\$ 19.21	812,133	\$ -	\$ -	\$ -
NY	\$ 2,779,904,320	\$ 11,787,338	\$ 19.65	6,650,062	\$ -	\$ -	\$ -
OH	\$ 1,636,572,898	\$ 5,859,769	\$ 23.27	3,640,782	\$ -	\$ -	\$ -
OK	\$ 453,901,127	\$ 1,548,478	\$ 24.43	1,015,824	\$ -	\$ -	\$ -
OR	\$ 526,038,457	\$ 1,822,014	\$ 24.06	1,165,072	\$ -	\$ -	\$ -
PA	\$ 1,591,371,459	\$ 6,552,768	\$ 20.24	4,375,088	\$ -	\$ -	\$ -
PR	\$ 368,348,312	\$ 1,261,706	\$ 24.33	818,025	\$ -	\$ -	\$ -
RI	\$ 150,466,668	\$ 619,653	\$ 20.24	310,389	\$ -	\$ -	\$ -
SC	\$ 506,247,975	\$ 1,645,167	\$ 25.64	1,092,190	\$ -	\$ -	\$ -
SD	\$ 82,407,805	\$ 237,846	\$ 28.87	348,058	\$ 0.57	\$ 196,871	\$ 2,362,458
TN	\$ 794,023,735	\$ 2,582,675	\$ 25.62	1,729,399	\$ -	\$ -	\$ -
TX	\$ 2,916,628,840	\$ 11,408,902	\$ 21.30	7,672,887	\$ -	\$ -	\$ -
UT	\$ 248,900,573	\$ 1,004,622	\$ 20.65	716,394	\$ -	\$ -	\$ -
VA	\$ 1,035,675,534	\$ 4,068,157	\$ 21.22	2,733,268	\$ -	\$ -	\$ -
VT	\$ 132,245,302	\$ 358,645	\$ 30.73	263,263	\$ 1.98	\$ 520,065	\$ 6,240,780
WA	\$ 804,747,979	\$ 3,182,747	\$ 21.07	2,079,518	\$ -	\$ -	\$ -
WI	\$ 664,788,883	\$ 2,455,223	\$ 22.56	1,517,442	\$ -	\$ -	\$ -
WV	\$ 314,451,471	\$ 848,005	\$ 30.90	1,188,658	\$ 2.11	\$ 2,504,526	\$ 30,054,308
WY	\$ 100,785,901	\$ 252,992	\$ 33.20	264,101	\$ 3.85	\$ 1,017,489	\$ 12,209,871
Total	\$ 40,572,414,759	\$ 157,791,098		107,947,969		\$ 29,965,939	\$ 359,591,274
		Average			\$ 21.43		
		Two Standard Deviations			\$ 6.70		
		Benchmark			\$ 28.13		

As **Table 2** shows, only ten states are projected to receive HCMS in the first quarter of 2010. These states are Alabama, Kentucky, Maine, Mississippi, Montana, Nebraska, South Dakota, Vermont, West Virginia, and Wyoming.

Table 2 shows how HCMS is calculated. At the bottom of the table the nationwide average total element long run incremental cost (TELRIC) for non-rural carrier study areas of \$21.43 is shown, and it is reported that the statewide average TELRIC data has variance such that two standard deviations is \$6.70. Adding the average plus two standard deviations equals the funding benchmark of \$28.13. Then, because of assumptions about jurisdictional separations, the HCMS pays 76% (the federal portion) of any statewide average amount above the funding benchmark as estimated by the High Cost Model (HCM).

Comparing to the data in **Table 2** with **Table 3** illustrates the impact of the WyPSC's proposal to change the funding benchmark to 125% of the nationwide average for states with population densities under ten persons per square mile, with extra support only for non-rural incumbent ETCs. Data for the number of lines supported by HCMS, which we used to calculate the number of ILEC only lines, also came from USAC's FCC filings.³² If the funding benchmark were changed to 125% of nationwide average TELRIC the new funding benchmark for very sparsely populated areas would be \$21.43 times 1.25, or \$26.78. Of course the federal fund would still only pay 76% in accordance with jurisdictional separations.

Table 3
Wyoming Plan - 125% Funding Benchmark, States With Population Density Under Ten Persons Per Square Mile, Extra Support for Incumbent Lines Only

	Support \$/Line/Mo.	Additional Annual Support	Population Density	Cumulative Additional Support
WY	\$4.87	\$2,012,655	5.4	\$2,012,655
MT	\$5.10	\$2,749,158	6.5	\$4,761,812
SD	\$1.59	\$1,545,418	10.5	\$6,307,230
NE	\$1.91	\$5,691,540	23.1	\$11,998,770
ME	\$1.24	\$6,001,040	42.7	\$17,999,810
MS	\$7.33	\$11,263,812	62.2	\$29,263,622
VT	\$3.00	\$3,228,338	67.2	\$32,491,960
WV	\$3.13	\$7,562,302	75.3	\$40,054,262
AL	\$2.59	\$18,897,373	91.2	\$58,951,635
KY	\$1.77	\$14,755,028	106.8	\$73,706,663
Total		\$73,706,663		

³² HC21 - CETC Reported Lines by Incumbent Study Area - High Cost Model Support - 1Q2010, from <http://www.usac.org/about/governance/fcc-filings/2010/quarter-1.aspx> Visited December 16, 2009.

Table 3 shows that only two states, Wyoming (\$2,012,655) and Montana (\$2,749,158), would receive extra support under Wyoming's proposal. This would amount to \$4,761,812 in additional annual high cost funding for non-rural carriers. Please note that would be about a 0.11% increase to the \$4.48 billion high cost program cited by USAC, and it would amount to 0.067% of the total \$7.1 billion universal service fund. (Under our proposal, additional support for about 34,000 Qwest customers in Wyoming is about 0.039% of the total \$7.1 billion universal service fund.) Furthermore, it is important to recognize that if our proposal were adopted, under the Wyoming universal service regime, 100% of federal HCMS that is provided to Qwest is credited to high cost customer bills in rural Zones One, Two and Three. We estimate that approximately 34,000 residential and business lines in Wyoming would benefit most from this proposal. These are very high-cost lines in extremely sparsely populated areas.

If the WyPSC's proposal to limit extra support based on the population density criteria were not adopted, then the 125% funding benchmark together with the 76% jurisdictional adjustment would still limit HCMS to the same ten states that currently receive HCMS and **Table N2** also shows the estimated impact under that scenario (an increase of about \$73,706,663 or 1% of the total \$7.1 billion universal service fund).

RATE COMPARABILITY

A search on January 19, 2010, of the FCC's Electronic Comment Filing System (ECFS) for filings between August 1, 2009, and October 15, 2009, indicates that 24 states filed rate comparability certifications.³³ Only two states, Vermont and Wyoming, certified that rural residential rates for customers for non-rural carriers are not comparable to the FCC's urban rate benchmark.

Sixteen states certified that rural residential rates of the non-rural carrier are reasonably comparable because they are less than the FCC's urban rate benchmark. These states did not identify specific rural residential rates. Six other states also certified that rural residential customers of their non-rural carriers are reasonably comparable but also identified a specific rural residential rate. , Both Wyoming and Vermont certified specific rural residential rates of their respective non-rural carriers. **Table 4** below shows the specific rural residential rates, the FCC's weighted average urban rate, and the FCC's weighted average rate plus two standard deviations.

³³ The 24 states that filed rate comparability certifications in 2009 were: Alabama, California, Colorado, Hawaii, Kentucky, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Carolina, Oregon, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Table 4
Certified Rural Residential Rates of Non-rural Carriers

State	Rate Area	Rate
Vermont minimum usage		\$ 20.74
Hawaii - Lanai		\$ 21.40
FCC nationwide average HCM cost		\$ 21.43
Missouri - Northwest Missouri Cellular		\$ 21.46
Oregon	Brookings	\$ 22.24
Hawaii - Molokai		\$ 22.49
Oregon	Gold Beach	\$ 22.62
Michigan AT&T		\$ 22.86
Missouri - Chariton Valley Wireless		\$ 23.07
Oregon	Lanlois	\$ 23.55
Oregon	Port Orford	\$ 23.55
Oregon	Reedsport	\$ 23.55
Oregon	Wallowa	\$ 23.55
Oregon	Lostine	\$ 23.69
Oregon	Enterprise	\$ 23.96
Oregon	Joseph	\$ 23.96
Oregon	Sumpter	\$ 23.99
Oregon	La Grande	\$ 24.02
Oregon	Hermiston	\$ 24.11
Oregon	Newport	\$ 24.14
Oregon	Baker City	\$ 24.37
Oregon	Astoria	\$ 24.37
Oregon	Seaside	\$ 24.37
Oregon	Warrenton	\$ 24.37
Oregon	Klamath Falls	\$ 24.37
Oregon	Pendleton	\$ 24.37
Hawaii - Maui		\$ 24.39
Hawaii - Kauai		\$ 24.39
New Mexico		\$ 24.46
Oregon	Elgin	\$ 24.65
Oregon	Imbler	\$ 24.65
Hawaii - Hawaii		\$ 25.08
Oregon	Cannon Beach	\$ 25.09
Oregon	Walla Walla	\$ 25.09
Oregon	Coos Bay - North Bend	\$ 25.09
Oregon	Cove	\$ 25.09
Oregon	Union	\$ 25.09
Mississippi		\$ 25.12
Oregon	Toledo	\$ 25.36
Oregon	Grants Pass	\$ 25.39
Oregon	Oakland-Sutherlin	\$ 25.50
Oregon	Roseburg	\$ 25.50
Oregon	Milton Freewater	\$ 25.50
Oregon	Stanfield	\$ 25.50
Oregon	Umatilla	\$ 25.50
Oregon	Albany	\$ 25.54
FCC nationwide weighted average urban rate		\$ 25.62
Oregon	Westport	\$ 26.19
Missouri - CenturyTel		\$ 26.39
Oregon	Prineville	\$ 26.52
Oregon	Culver	\$ 26.52
Oregon	Madras	\$ 26.52
Oregon	Harrisburg	\$ 26.52
Hawaii - Oahu		\$ 26.60
Oregon	Athena-Weston	\$ 26.63
Oregon	Siletz	\$ 26.76
WyPSC proposed HCMS funding benchmark = 125% average cost		\$ 26.78
Oregon	Camp Sherman	\$ 27.20
Michigan Verizon North		\$ 27.93
Michigan Verizon North Systems		\$ 27.93
Oregon	Bandon	\$ 28.29
Oregon	Lakeside	\$ 28.29
Oregon	Murphy-Provolt	\$ 28.40
Oregon	Mill City	\$ 28.40
FCC HCMS funding benchmark = average cost + 2 std dev		\$ 28.13
Oregon	Myrtle Point	\$ 28.48
Oregon	Powers	\$ 28.48
Oregon	Coquille	\$ 28.84
Wisconsin Verizon low		\$ 29.07
Missouri - U S Cellular		\$ 31.88
Wisconsin AT&T low		\$ 32.61
Wisconsin AT&T high		\$ 32.99
Wisconsin Verizon high		\$ 34.39
FCC weighted average urban rate plus two standard deviations		\$ 36.52
Wyoming		\$ 46.37
Vermont maximum usage		\$ 47.89

Table 4 shows that Wyoming’s rural residential rate for customers served by Qwest (the non-rural carrier) are 181% of the weighted average nationwide urban rate and 127% of the FCC’s nationwide weighted average urban rate plus two standard deviations. Wyoming’s rural residential rates are not comparable to the FCC’s urban benchmark, and are among the highest in the United States exceeded only by Vermont’s measured service rate with maximum usage. **Table 4** shows unequivocally that non-rural carrier rural residential rates in Wyoming are not reasonably comparable to the FCC’s nationwide weighted urban average rate.

The Tenth Circuit’s discussion provides additional illumination of the problems with the FCC’s high cost mechanism for non-rural carriers:

In crafting its new cost support mechanism, the FCC relied on rate data compiled in a GAO Report. *Id.* ¶ 49 & App. C. The GAO Report identified and compared individual rates in urban and rural areas served by non-rural carriers. *Id.* App. C. Applying the definition of “reasonably comparable” rates discussed above, the FCC concluded that current rates were reasonably comparable. *Id.* ¶ 49. The Commission then concluded that setting the cost benchmark at two standard deviations would adequately support the goal of ensuring reasonably comparable urban and rural rates. *Id.*

In that the non-rural, high-cost support mechanism contained in the Order on Remand rests on the application of the definition of “reasonably comparable” rates invalidated above, it too must be deemed invalid. On a separate note, we did intimate in *Qwest I* that we would be inclined to affirm the FCC’s cost-based funding mechanism if it indeed resulted in reasonably comparable rates. However, we expected the Commission to return to us with empirical findings supporting this conclusion. Once again, we find no evidence in the record before us to support the FCC’s pairing of rates to costs in this context. In other words, the FCC based the two standard deviations cost benchmark on a finding that rates were reasonably comparable, without empirically demonstrating a relationship between the costs and rates surveyed in this context.³⁴

COMMENTS

Broken Promise

In *Qwest II* the Tenth Circuit:

remanded for the second time an FCC order attempting to satisfy the requirements of Section 2542/ and expressed its expectation that the agency would “comply with our decision in an expeditious manner, bearing in mind the consequences inherent in further delay.” *Qwest II*, 398 F.3d at 1239 (PA 33). But after opening a rulemaking proceeding to consider the remanded questions in December 2005, the FCC abandoned the matter. Rather than bear in mind the “consequences inherent in further delay,” the FCC has left the telecommunications industry to continue operating for nearly four years under the constraints of the non-rural, high-cost universal service support mechanism that this Court deemed unlawful. Carriers serving many high-cost areas across the United States therefore have been operating for almost thirteen years without the funding that Congress recognized as essential to their ability to support high-cost telephone service at rates and service levels reasonably comparable to those in urban areas. And those carriers’

³⁴ *Qwest II*, pp. 24-25

customers have endured higher rates and/or fewer services than their urban counterparts, in direct contravention of Congress's intent.³⁵

In spite of everything that the WyPSC and others have put before the FCC in writing, including filing the *Joint Petition for Writ of Mandamus* in the Tenth Circuit, the FCC makes approximately 26 tentative conclusions in the FNPRM that indicate an intention to do nothing substantive in response to *Qwest II*.

When Congress opened local markets with the local interconnection provisions of Section 251 of the Act, to the significant benefit of urban customers, it also provided that the elimination of subsidies flowing from rates then being paid by urban customers to high cost areas, would be balanced by universal service support promised to customers in high cost areas. This critical promise, in the absence of which it is difficult to imagine passage of the Act having occurred, has been broken.

The Tenth Circuit recognized the nature of the FCC's important responsibility to bring the promise of the Act to fruition:

With the advent of competition, Congress feared that carriers entering the market would compete aggressively for low-cost, urban areas, leaving former monopoly carriers the **unsustainable burden** of providing service to rural areas in the face of a dwindling urban base.³⁶ (emphasis added)

The FCC must move immediately to address rural/urban rate comparability for Wyoming. Our following comments are specific to the FCC's numerous tentative conclusions and requests for comments. We describe a clear path to adopting the WyPSC's recommendation to adopt a new 125% funding benchmark for areas with population densities less than ten persons per square mile, with extra support to be provided to incumbent lines only.

In Paragraph 1 of the FNPRM the FCC tentatively concludes that the FCC should not attempt wholesale reform of the non-rural high-cost mechanism at this time, but seeks comment on certain interim changes to address the court's concerns and changes in the marketplace.

The WyPSC does not recommend that the FCC should attempt wholesale reform of the non-rural high-cost mechanism at this time. We respectfully observe that subsequent requests for comment on "certain interim changes" are consistently overshadowed by this tentative conclusion. To make no changes to address the Tenth Circuit's concerns. This expression of a tentative conclusion is groundwork for further neglect of the issues identified by the Court in *Qwest II*. The WyPSC is not prepared to accept an assurance that all will be resolved if customers in extremely high-cost areas simply wait a while longer.

³⁵ *Joint Petition for Writ of Mandamus* p. 9

³⁶ *Qwest II*, p. 5.

In Paragraph 3, the FCC tentatively concludes that while the Commission considers comprehensive universal service reform consistent with both the Communications Act and the Recovery Act, the current non-rural high-cost mechanism is an appropriate interim mechanism for determining high-cost support to non-rural carriers.

We agree with this general statement. Nothing in our comments, past proposals, or current proposal aggravates the FCC's tentative conclusion. The modest change that we recommend is very easily implemented and would work well in light of the ambitions of the Recovery Act. We offer additional comment concerning the transition to broadband universal service in our comments below responding to Paragraph 13.

The FCC continues in Paragraph 3 to tentatively find that the mechanism as currently structured comports with the requirements of section 254 of the Communications Act, and it is therefore appropriate to maintain this mechanism on an interim basis until the Commission enacts comprehensive reform.

This proposition that the current mechanism comports with the principles of sufficiency and reasonable rural/urban rate comparability set forth in section 254 openly defies the Court's decision in *Qwest II*. As the Court explained:

By designating a comparability benchmark at the national urban average plus two standard deviations, the FCC has ensured that significant variance between rural and urban rates will continue unabated. This assertion is borne out by the Commission's own data. 258 F.3d at 1201. Under the 2002 data, rural rates falling just below the comparability benchmark may exceed the lowest urban rates by over 100%. Even if such rural rates are compared against the national urban average, we fail to see how they could be deemed reasonably comparable, especially in light of our previous consideration.

The Commission explains its selection of two standard deviations as the appropriate benchmark on the basis that it approaches the outer perimeter of the variance in urban rates. As rural rates approach the level of the highest urban rate, the FCC believes closer scrutiny is appropriate. While there is a certain logic to this approach, the benchmark is rendered untenable because of the impermissible statutory construction on which it rests. From this perspective, the Commission's selection of a comparability benchmark based on two standard deviations appears no less arbitrary than its prior selection of a 135% cost-support benchmark. See *id.* at 1202-03. On remand, the FCC must define the term "reasonably comparable" in a manner that comports with its concurrent duties to preserve and advance universal service.³⁷

In Paragraph 12 the FCC tentatively concludes that fundamental reform limited to only the non-rural high-cost support mechanism should not be proposed at this time.

We do not recommend "fundamental reform" at this time. Rather, we recommend an easily implemented adjustment to the mechanism that would have a very modest

³⁷ *Qwest II*, pp. 23 - 24

impact in terms of the overall fund, but a very important impact for about 34,000 extremely high-cost customers in Wyoming.

In Paragraph 12 the FCC continues, saying “our efforts to revise and improve high cost support will be advanced further through proceedings that follow from the National Broadband Plan. Accordingly, we tentatively conclude that we should neither propose fundamental reform of the non-rural high-cost support mechanism in advance of the forthcoming National Broadband Plan, nor attempt to set the stage for implementation of (as yet unknown) plan recommendations in this further notice of proposed rulemaking.

We fail to see the connection between the directive of the Court in *Qwest II*, that “reasonably comparable” be defined, the requirements of the Act, and the national broadband plan. We cannot understand what the FCC is suggesting with this particular request for comment.

The term “broadband” refers to advanced communications systems capable of providing high-speed transmission of services such as data, voice, and video over the Internet and other networks. Transmission is provided by a wide range of technologies, including digital subscriber line and fiber optic cable, coaxial cable, wireless technology, and satellite. Broadband platforms make possible the convergence of voice, video, and data services onto a single network.³⁸

The subject of this FNPRM is the provision of adequate universal service to customers in rural areas served by non-rural carriers. As we have explained many times now, our concern is consumers in places like Lusk, Wyoming. We have described the difficulties of funding reasonably comparable rates in such high cost, sparsely populated areas. We observe that the FCC has not finished the job assigned by the Act in places like Lusk, Wyoming. Shifting the discussion to broadband holds little if any promise for consumers sparsely populated areas of Wyoming. We reiterate our concern that providing broadband universal service in such high-cost areas will be very expensive, and will only occur after significant delay, if ever.

Our concerns are heightened by the fact that the FCC raises this confusing issue by implying that the unlawful current regime will be ameliorated by a national broadband plan. We do not see the connection. We are not aware that the FCC’s approach to a national broadband plan contains any mention whatsoever of melding together a universal service/national broadband plan that addresses the unlawful current regime and rural rates that are persistently unreasonable and not comparable due to insufficient funding.

³⁸ <http://www.fcc.gov/broadband/> Visited January 22, 2010.

The FCC's initial notice about a national broadband plan does not mention addressing the HCMS regime that has produced rates that are not reasonably comparable due to insufficient funding.³⁹

On January 7, 2010, FCC Chairman Julius Genachowski wrote Congress to request a one month extension for delivery of the final plan for broadband.⁴⁰ In his letters, the Chairman states: "Importantly, this extension will have no impact on the FCC budget for the Plan, or on other ongoing FCC activities."⁴¹ Discussing putting off the issue of rate comparability until there is a national broadband plan, as set forth in the context and implication of the FCC's tentative conclusions and inquiry at Paragraph 12 of the FNPRM seems to belie the Chairman's representations to Senator Rockefeller, Senator Hutchinson, Representative Waxman, and Representative Barton that the national broadband plan will not cause delay in other matters. This only increases our concern that the FCC is intent upon ignoring the problems with the unlawful HCMS regime. That regime has produced rates that are not reasonably comparable due to insufficient funding, and the FCC now suggests it is tentatively intent on relying on a broadband plan that may or may not produce any results relevant to *Qwest II*, and which is extremely unlikely to provide sufficient funding for reasonably comparable rural/urban rates.

We are concerned that the FCC's approach to resolving rural/urban rate disparities, which seems distracted by a national broadband plan will unnecessarily delay relief yet again.

The *Qwest II* court also directed the Commission to implement rules consistent with section 254 of the Telecommunications Act of 1996 "in an expeditious manner, bearing in mind the consequences of inherent in further delay." [*Qwest II* at 1239] *Qwest II* was decided two years ago. Nine months after the Court's decision, in December of 2005, the Commission issued a Notice of Proposed Rulemaking ("NPRM"). While the NPRM sought comment on a wide variety of issues, it contained no specific proposals for action. The comment cycle on the NPRM closed in the spring of 2006. Since then, the FCC has taken no further formal action, and we have no information suggesting that the FCC has developed a specific proposal to correct its rules, or that it will move toward adopting revised rules soon.⁴²

Our concern was not ameliorated by the FCC's news release on December 16, 2009, (one day after issuing the FNPRM on the Tenth Circuit matter) regarding an

³⁹ See April 8, 2009, FCC press release, "FCC LAUNCHES DEVELOPMENT OF NATIONAL BROADBAND PLAN, Seeks Public Input on Plan to Ensure Every American has Access to Broadband Capability" Docket No. GN 09-51.

⁴⁰ http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-295546A1.pdf Visited January 22, 2010.

⁴¹ Id.

⁴² March 19, 2007, letters to Chairman Kevin J. Martin from the Vermont Public Service Board, the Vermont Department of Public Service, the South Dakota Public Utilities Commission, the Kentucky Public Service Commission, the Montana Public Service Commission, the Nebraska Public Service Commission, the Wyoming Public Service Commission, and the Maine Public Utilities Commission urging the FCC to resolve these issues expeditiously.

interim report delivered to the FCC by the task force developing the plan.⁴³ According to the FCC news release:

With 63 days remaining until the plan must be delivered to Congress, highlights of the framework, principles and preliminary options outlined by the task force report Wednesday included:

Universal Service Options (USF)

Overview: USF resources are limited and require allocation tradeoffs. Policies should be flexible enough to adjust to changes in technology and demand for broadband service.

- Short and medium-term options:
- Cutting inefficient spending in the High-Cost fund to free up funds for broadband
- Removing barriers to use of E-Rate-funded connections in schools for adoption and community use
- Extending the Rural Health Care Pilot Program
- Long-term options:
- Comprehensive overhaul of USF in conjunction with other proceedings, such as intercarrier compensation and special access
- Transforming the High-Cost fund to support broadband, with a defined transition path for existing recipients
- Permitting low-income households to use Lifeline support for broadband.
- Designing a new rural health care program based on lessons learned from the pilot project⁴⁴

The December 16, 2009, FCC news release goes on to mention infrastructure options, spectrum options, options for tribal lands, set-top box options, transparency options, media options, broadband adoption options, accessibility options, and public safety options, but **no** indication that the concerns we have raised with the Tenth Circuit and the concerns we had expected would be squarely addressed by this FNPRM are going to be addressed by the national broadband plan as the FCC suggests in Paragraph 12. This is extremely disappointing.

The WyPSC is not opposed to universal service for broadband. However, it will be very expensive to provide rural customers in Wyoming with universal service for broadband – universal service for plain old telephone service (POTS) that is thinly supported with federal HCMS doesn't yet satisfy the principles of §254 (b) (3) in Wyoming. It will be very expensive to provide rural customers in Wyoming with universal service for broadband. We are very concerned that for too many years the FCC has ignored the Tenth Circuit's remand order, and for a decade the FCC has ignored its duty with respect to Wyoming's non-rural carrier customers by failing to provide sufficient support to enable rural residential rates in Wyoming that are reasonably comparable to urban rates.

That the FCC now appears to have tentatively determined that the best course is to continue to ignore the problem because universal service for broadband will soon

⁴³ "OPTIONS FOR A NATIONAL BROADBAND PLAN, *Task Force Provides Framework for Final Phase in Development of Plan*" FCC News Release, December 16, 2009.

⁴⁴ *Id.*

suddenly materialize in rural Wyoming is intensely disturbing. Wyoming ratepayers cannot be ignored any longer. We strongly suspect it will be a very long time before reasonably comparable prices for broadband service in rural Wyoming will be a fact made possible by the national broadband plan or fundamental universal service reform to support broadband. Basic universal service in high-cost rural areas is not a rapidly obsolescing business model.

Each time the FCC has revisited its obligations under Section 254 to support the rural rates that customers of non-rural carriers must pay in order to promote and advance universal service, it has arbitrarily ordered mechanisms that are inconsistent with section 254. The FCC seems intent upon compounding its disregard of the Tenth Circuit's order and the requirements of section 254. The FCC's plans to wrap this matter into its efforts to comply with the Recovery Act with only a vague implication that it might address the issues of sufficiency and comparability put before it by *Qwest II* hardly even constitutes a reference to the pending remand issues. The FCC should put an end to its delay and its willful disregard for its obligation to address the basic requirements of Section 254 of the Act and *Qwest II*.

So far, the FCC has simply ignored altogether the Tenth Circuit's remands. "After issuing a notice of proposed rulemaking immediately after the *Qwest II* decision, the FCC has never revisited the remand issues—even in the face of repeated entreaties from the industry and states to do so."⁴⁵ As long as the FCC continues to ignore this matter, it leaves rural consumers in non-rural carrier areas without a lawful high-cost universal service support mechanism.⁴⁶

As the joint petitioners stated in the *Joint Petition for Writ of Mandamus*, there is significant harm from the currently unlawful universal service regime for non-rural carriers. Rural Wyoming customers in areas served by the non-rural carriers must be provided reasonably comparable rates and quality of service in extremely high-cost areas. Without the support that Congress deemed critical to ensuring that rates in these areas are reasonably comparable to the FCC's own calculation of the nationwide weighted average urban rate, this will never occur. Without sufficient universal service support, these consumers must pay significantly higher rates than urban customers. Worse, the agency now proposes plans to perpetuate this unlawful support mechanism.⁴⁷

In Paragraph 12 the FCC tentatively concludes that no fundamental reform is required since the program as currently structured is consistent with its statutory obligations under section 254.

We do not advocate fundamental reform.

⁴⁵ *Petition for Writ* p. 5

⁴⁶ *Id.*

⁴⁷ *Id.* pp. 5-6.

In Paragraph 13 the FCC states its reluctance “at this time” to propose adopting any changes to the non-rural support mechanism that would increase significantly the amount of support non-rural carriers would receive. The FCC cautions that any rules adopted in this proceeding are likely to be interim rules and in effect only until comprehensive universal service reform is adopted in the aftermath of the National Broadband Plan. The FCC warns ominously that “Any substantial increases in non-rural high-cost support disbursements, moreover, would increase the contribution factor above its current high level.” The FCC worries that “Because universal service is funded by a general pool subsidized by all telecommunications providers – and thus indirectly by the customers – excess subsidization in some cases may undermine universal service by raising rates unnecessarily, thereby pricing some consumers out of the market.” [FOOTNOTE OMITTED] The FCC says that “If carriers were to receive significant additional high-cost support on an interim basis as a result of this proceeding, it likely would be more difficult to transition that support to focus on areas unserved or underserved by broadband, if called for in future proceedings.” Given these concerns, the FCC tentatively concludes that any changes to the non-rural high-cost support mechanism adopted at this time should be interim in nature and should not increase the overall amount of non-rural high-cost support significantly above current levels, provided that goal can be accomplished consistent with its mandate under section 254. The FCC seeks comment on this tentative conclusion and, to the extent commenters advocate changes to the existing mechanism, and asks commenters to address how any such changes will constrain growth in the amount of support.

As we have shown, we do not propose a significant increase in the amount of support non-rural carriers would receive. Perhaps it is one of the beauties of Wyoming’s situation that we have the smallest state population in the United States, and so our proposal for additional support is very modest and is not a significant increase to the size of the fund. As the Tenth Circuit noted,

Federal support to non-rural high-cost carriers currently represents but a small percentage of comprehensive federal high-cost support allocations—only 13.7% of high-cost support allocated in 2002. Order on Remand ¶ 102.⁴⁸

We are perfectly happy to participate actively in the development of a universal service fund for broadband, and we would be very happy if the FCC would expeditiously make what it terms “interim changes” immediately. We think that the interim for Wyoming that the FCC is dreaming about is going to be much longer than anyone expects because of the extremely high cost of providing service in our rural, sparsely populated areas, and the job of providing plain old telephone service at reasonably comparable rates still is not finished. We are very concerned that rural Wyoming customers will be living in the FCC’s “interim” dreamscape for the foreseeable future. To be perfectly clear, an interim that is set to terminate pursuant to some sort of finding that the mission has been accomplished would be just fine with us.

With regard to the concern about increasing the contribution factor, we would be quite surprised if our proposal were to amount to a “substantial increase.” We definitely

⁴⁸ *Qwest II* p. 12

disagree that our proposal seeks “excess subsidization” and we would be completely surprised if it were to “price out” any consumers anywhere. Our proposal does not undermine universal service, it promotes universal service. We have estimated the extra support for Wyoming which we propose is only about 0.039% of the total \$7 billion fund.

Likewise, we do not believe that our proposal is of a magnitude that might possibly thwart any sort of transition in the future. The amount of additional support we propose will continue to be used for the preservation and advancement of universal service, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, consistent with 47 U.S.C. § 214(e) and the requirements and mandates of 47 C.F.R. Part 54. It is our belief that this means that in the “interim” a viable network that is scalable for broadband will be supported, substantially making the transition to broadband feasible.

As the Tenth Circuit said,

. . . the principle of “reasonable comparability” is but one of seven principles identified by Congress to guide the Commission in drafting policies to preserve and advance universal service. See 47 U.S.C. § 254(b). For instance, Congress also intended that “[q]uality services should be available at just, reasonable, and affordable rates.” *Id.* § 254(b)(1). As we noted in *Qwest I*, “[t]he plain text of the statute mandates that the FCC ‘shall’ base its universal policies on the principles listed in § 254(b).” 258 F.3d at 1200. Under the Act, the FCC’s duty is mandatory. *Id.* However, we posited that while “the FCC must base its policies on the principles, . . . any particular principle can be trumped in the appropriate case. . . . [T]he FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal.” *Id.*⁴⁹

We believe that our proposal to limit additional funding to incumbent ETCs will constrain growth in the amount of support.

In Paragraph 14, the FCC tentatively concludes that it should continue requiring the states to review annually their residential local rates in rural areas served by non-rural carriers and certify that their rural rates are reasonably comparable to urban rates nationwide, or explain why they are not.

We agree. To say the states should continue is a bit misleading when more than half have evidently not been doing it. Furthermore, the juxtaposition of the huge amount of HCMS funding to states that have consistently certified their rates are reasonably comparable, seems to gainsay the FCC’s seriousness.

In Paragraph 15 the FCC seeks comment on whether it should change the rates it requires the states to compare in light of the considerable changes in technology, the telecommunications marketplace, and consumer buying patterns that have occurred since it adopted a national average urban rate benchmark based on local rates. Specifically, the FCC seeks comment on whether the Commission should define “reasonably comparable” rural and urban rates in terms of rates for bundled telecommunications services.

⁴⁹ *Qwest II* p. 18

We respectfully submit that the issue of bundles is indeed more properly the subject of more fundamental reform, and one which will not be easily or timely solved. We admit that the FCC has raised a very good question with regards to bundles. We are also wrestling with this dilemma in administering our state fund. We refer to the rate certification submitted in 2009 by Vermont Public Service Board (Board) wherein the Board notes that measuring local rates can be very difficult in some circumstances, and may be subject to substantial judgment, particularly with regard to bundles.⁵⁰

In Paragraph 21 the FCC tentatively concludes that the current non-rural funding mechanism should remain in place at this time, and seeks comment on this tentative conclusion. The FCC tentatively concludes that it is appropriate to distribute universal service support in high-cost areas based on estimated forward-looking economic cost rather than on retail rates, primarily because costs necessarily are a major factor affecting retail rates.

The WyPSC has commented in the past that it does not understand the FCC's confidence in the substitutability of rates and costs when looking at urban/rural comparability.⁵¹ Voicing concerns about value of service pricing in many states, the WyPSC explained in 2002:

The Recommended Decision states at paragraph 39, that "We do not agree that an urban cost benchmark would better satisfy the statutory comparison of urban and rural rates. Like the current mechanism, the urban benchmark substitutes costs for rates." While conceptually we believe that costs can be used as a substitute for rates, we believe that substitution must be premised on a general agreement that rates are cost based. Wyoming's rates are cost based. However, such is not the case for many other states.

. . . Nowhere do we find where the Joint Board recognized, let alone adjusted for, the established fact of value-based pricing. Wyoming has cost-based rates. Many other states do not. To assume that costs and rates are similar on a ubiquitous basis nationwide is a serious flaw and it is an error that disadvantages Wyoming. When the Joint Board finds that rural, urban, and suburban rates are all currently comparable based on the current support method (and the method proposed to be continued), this similarity is based on pricing in which rates for rural areas that are clearly higher cost (based on the recognition that costs are driven by distance and density) are less than the rates for the lower cost areas. If rates in all jurisdictions became cost based, we are certain that the claimed comparability would no longer be sustainable.⁵²

That remains true. However, this question is now a distraction. We do not recommend fundamental reform such as a change to a funding benchmark based on rates rather than costs. Given the current regulatory/policy environment, we recommend a simple and easily implemented change of the funding benchmark for uniquely high cost situations.

⁵⁰ State of Vermont Public Service Board, Certification of Support for Rural and Non-Rural High-Cost Carriers Pursuant to 47 C.F.R. Sections 54.313-314, CC Docket Nos. 96-45 and 00-256, September 29, 2009.

⁵¹ See page 6 of the WyPSC's comments submitted December 20, 2002, in response to the FCC's public notice DA 02-2976 with respect to the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) as described therein.

⁵² Id. p. 8

At Paragraph 24 the FCC tentatively concludes that it should continue to use the existing model to estimate non-rural support while these interim rules remain in place.

We agree.

In Paragraph 25 the FCC tentatively concludes that it should continue to determine non-rural support by comparing the statewide average cost of non-rural carriers to a nationwide cost benchmark set at two standard deviations above the national average cost per line on an interim basis. As discussed above in the FNPRM the FCC tentatively concludes that any changes to the non-rural high-cost support mechanism should not result in substantial additional support. Following from this tentative conclusion, the FCC further tentatively concludes that it should not adopt the proposal of Vermont and Maine that the FCC use a cost benchmark of no more than 125 percent of cost, because this would increase significantly the overall amount of high-cost support for non-rural carriers.

We obviously disagree with the FCC's tentative conclusion to maintain the current funding benchmark. It is unlawful. However, we agree that a substantial or significant increase in the overall amount of high-cost support for non-rural carriers would be inappropriate. That is why our proposal is to limit additional funding to areas that actually need it due to extremely high cost characteristics. Our analysis shows that our proposal would not generate a large increase in the size of the HCMS annually. Our proposal would amount to less than \$7,000,000 in additional HCMS. Seven million dollars is less than a 1% increase to the \$4 billion annual high cost program.⁵³

Also, we respectfully remind the FCC that not only Maine and Vermont but also Wyoming proposed a 125% funding benchmark. Although the FCC only mentions the Wyoming once in the FNPRM, we assume that the reference at Paragraph 25 to the proposal for a 125% funding benchmark excluded Wyoming as a proponent of the idea due to what must have been an unintentional oversight. We would note that our proposal offers the additional detail of limiting the amount of increased funding to only places with extremely sparse population density and only for incumbents.

In Paragraph 27 the FCC tentatively concludes that, until it adopts an updated cost model, the non-rural high-cost support should continue to be based on statewide average costs.

For purposes of responding to this FNPRM we do not propose alteration of the current regime except for a new, lower, constrained funding benchmark as described in our proposal.

In Paragraph 27 the FCC tentatively concludes that the proposals to change the non-rural mechanism should not be adopted in their entirety at this time, the FCC seeks comment on whether it might be feasible to adopt some elements of these or other proposals. The FCC also seeks comment on whether there are other interim adjustments that it should make to the non-rural mechanism that could be implemented quickly, through an order issued no later than April 16, 2010.

⁵³ <http://www.usac.org/hc/about/default.aspx> Visited January 20, 2010.

We believe our proposal could be easily implemented through an order by the FCC.

In Paragraph 28 the FCC tentatively concludes that it should maintain the existing non-rural high-cost funding mechanism on an interim basis given the relationship between universal service support and the Commission’s mandate under the Recovery Act to develop a plan for providing broadband throughout the nation. While the Commission is developing that plan and coordinating its requirements under both the Recovery and the Communications Act, the FCC tentatively concludes that the program as currently constructed is consistent with the requirements in section 254 of the Communications Act.

We disagree that the program as currently constructed is consistent with §254. The Tenth Circuit also addressed the FCC’s view of sufficiency in *Qwest I*:

Section 254(e) of the Act provides that federal universal service support “should be explicit and sufficient to achieve the purposes of [§ 254].” 47 U.S.C. § 254(e). On remand, the FCC defined “sufficient” in the following terms: “enough federal support to enable states to achieve reasonable comparability of rural and urban rates in high-cost areas served by non-rural carriers.” Order on Remand ¶ 30. The Commission further limited the definition by stating that “non-rural high-cost support should be only as large as necessary to meet the statutory goal.” *Id.*

In Paragraph 31 the FCC says it believes that a fair assessment of whether the Commission has reasonably implemented the section 254 principles, and whether support is “sufficient,” must encompass the entirety of universal service support mechanisms; no single program is intended to accomplish the myriad of statutory purposes. Moreover, the competing purposes of section 254 impose practical limits on the fund as a whole: if the fund grows too large, it will jeopardize other statutory mandates, such as ensuring affordable rates in all parts of the country, and requiring fair and equitable contributions from carriers. We seek comment on the foregoing analysis. The FCC also seeks comment on the principles the Commission should consider in designing the non-rural high-cost mechanism and in determining whether the level of support is “sufficient.”

We believe it is the FCC’s obligation to balance all of the principles of universal service. From our perspective, we think that for purposes of responding to the Tenth Circuit, the FCC should focus on reasonable and articulable definitions of sufficiency and comparability. We realize that the entirety of universal service support mechanisms is the FCC’s responsibility. However, we do not believe our proposal will make the fund so large that it will jeopardize other statutory mandates. Our analysis of public data shows that the increase to HCMS we propose is a very tiny part (0.067%) of the overall universal service budget.

In Paragraph 33 the FCC tentatively concludes that in designing its non-rural high-cost mechanism it should principally balance the statutory principles of reasonable comparability and affordability of rates in areas served by non-rural carriers on the one hand with affordability of rates in other areas where customers are net contributors to universal service funding on the other.

We think the FCC is absolutely correct in expressing concern about net payers into the overall universal service fund. In our initial comments filed on May 8, 2009, responding to the FCC's notice of inquiry into the matter of issues raised by the Tenth Circuit we provided thoughtful analysis of the net payments by each state that take account of how much each state pays into the overall universal service fund and how much each state draws. As we said in our May 8, 2009, comments:

The WyPSC realizes that any proposal likely to increase the size of the fund, particularly a proposal advanced by a net recipient, will draw opposition from those justifiably concerned about the size and sustainability of the fund. However, it is important to consider that high-cost support accounts for a very small portion of total support, and appropriate resolution of the sufficiency and rate comparability issues directly related to *Qwest II* can be achieved at a cost that will likewise be very small in relation to the overall size of the fund. Wyoming receives more than it pays under the current universal service regime. However, the amount of additional high-cost support that is needed to give Wyoming sufficient support to promote comparable rates is small relative to the overall fund. It has been the WyPSC's experience that whenever sufficiency of universal service funding is discussed, the issue of how much money particular jurisdictions receive is raised. It is the WyPSC's opinion that, in order to be fair, such a discussion must account for all universal service programs, including funding for high-cost support, as well as funding for schools and libraries, rural health care, and low income support.⁵⁴

Our proposal would result in about a 0.67% increase to the total universal service fund.

In Paragraph 34 the FCC tentatively concludes that current subsidy levels are at least sufficient (and may be more than enough) to ensure reasonably comparable and affordable rates that permit widespread access to basic telephone service.

Our foregoing arguments, previous statements, and efforts before the Tenth Circuit all explain our position on the issue of sufficiency .

In Paragraph 35 the FCC further tentatively concludes that its non-rural support mechanism is also consistent with the statutory principle that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” The FCC’s cost-based formula provides a specific and predictable methodology for determining when non-rural carriers qualify for high-cost support.

We disagree with the FCC's conclusions about sufficiency and hope to persuade the FCC to change its mind after having read these comments. While the WyPSC has previously raised concerns about the juxtaposition of rate comparability with a cost based benchmark, we do not wish to belabor that point here. We also realize that the cost model used for determining HCMS is imperfect, and we have said before that we do not oppose fixing the model, but we oppose further delay addressing the issues remanded by the Tenth Circuit concerning sufficiency and comparability.⁵⁵

⁵⁴ Comments of the Wyoming Public Service Commission, May 8, 2009, Notice of Inquiry Regarding Issues Raised by the February 23, 2005, United States Court of Appeals for the Tenth Circuit in the *Qwest II* Decision, In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service Support, WC Docket No. 05-337 and CC Docket No. 96-45. Page 12.

⁵⁵ See WyPSC May 8, 2009, comments, page 17.

In Paragraph 36 the FCC tentatively concludes that it would be premature to expand existing universal service programs at this time, before the National Broadband Plan has been issued.

Our comments responding to the FCC's inquiries at Paragraph 12 address our concerns about the FCC's desire to further delay responding to the Tenth Circuit while it embarks on a new national broadband plan that has no apparent bearing on the urgently needed corrections to the unlawful current regime.

In Paragraph 39 the FCC tentatively concludes that the statute does not require the FCC to make rural rates comparable to the "lowest urban rate."

We believe the FCC is required to make rural rates comparable to the "lowest urban rate" either. We believe that the FCC is under a statutory mandate and subject to a remand order from the Tenth Circuit to fulfill all of the principles of section 254, including especially the requirement to provide a sufficient mechanism that addresses reasonably comparable rates. For the purposes of addressing the sufficiency and comparability issues, we think that our proposal, which adopts the FCC's use of the nationwide weighted average urban rate as the starting point for a funding benchmark is acceptable for the purposes of responding to the Tenth Circuit's *Qwest II* decision.

In Paragraph 40 the FCC asks how it should evaluate whether the current non-rural high-cost mechanism is "advancing" universal service in satisfaction of section 254(b)(5)? Does the fact that telephone penetration rates have increased since the FCC started its universal service programs demonstrate that "rates are" *not* "too high" under that program, since "essential telecommunications services encompassed by universal service" have *not* "prove[d] unavailable" but have in fact become more available? Given the variance in urban rates, does it make sense to interpret this statutory principle as requiring that *all* rural rates be no higher than the lowest urban rate? Would such an interpretation effectively result in the preemption of state rate-making authority? In addition, would such an interpretation of the statute result in a significant increase in the size of the fund that would unreasonably burden those contributing to the fund? In interpreting this statutory provision, should the FCC instead compare the variance in rural rates to the variance in urban rates? Are there other ways to assess rate comparability?

- The WyPSC has repeatedly provided information to the FCC, including those comments which amply demonstrate that rural residential rates in Wyoming's non-rural carrier study areas are much higher than the FCC's nationwide weighted average urban rate as well as the benchmark. We have pointed out numerous examples of others who agree with us or at least share a concern, including the Tenth Circuit.
- The statute does not mention penetration rates as a test of reasonable rate comparability.
- We are very concerned that the rural residential rates Wyoming consumers must pay in non-rural carrier study areas are "too high," and that this prevents essential telecommunications services encompassed by universal service being as available as contemplated by the Act.

- We do not suggest that rates in rural areas served by non-rural carriers must be no higher than the lowest urban rate, and we do not suggest that the FCC should preempt state ratemaking authority.
- We do not believe that our proposal will result in a significant increase in the size of the fund that would unreasonably burden those contributing to the fund.
- We do not propose a different way to assess rate comparability than the current process. We think the FCC should more carefully pay attention when states like Wyoming repeatedly certify to the FCC that rates are not reasonably comparable.

In Paragraph 41 the FCC discusses the Tenth Circuit’s criticism of the FCC’s statutory construction. The FCC says that the Tenth Circuit’s criticism appeared to stem from a concern that the Commission’s non-rural mechanism was not doing enough to satisfy the statutory mandate to “advance” universal service. The FCC asks if it is reasonable to interpret the statute’s directive to “advance universal service” as satisfied if the Commission extends universal service to new services and new technologies, such as broadband Internet access service? As discussed above, section 6001(k) of the Recovery Act directs the Commission to submit to Congress a National Broadband Plan. The FCC notes that the Recovery Act further requires that the plan “shall seek to ensure that all people of the United States have access to broadband capability,” and that the plan include, *inter alia*, a “detailed strategy for achieving affordability of such [broadband] service and maximum utilization of broadband infrastructure and service by the public.” The FCC asks if these provisions of the Recovery Act support such an interpretation.

We do not believe Section 6001(k) of the Recovery Act, or anticipated compliance therewith, obviates the FCC’s obligations with respect to the Court’s order in *Qwest II*.

CONCLUSION

Based on these facts, the methods in which the average urban rate was calculated and the rate comparison requirements of the *Order on Remand*, the WyPSC concludes that its rural residential rates are not reasonably comparable to the nationwide urban rate benchmark. Another factor influencing the rate comparison is the continued presence of substantial amounts of implicit subsidies in local rates constituting the average urban rate and the nationwide urban rate benchmark.

The WyPSC pursued a remedy for rural/urban residential rate disparity through its request for further federal action, provided to state commissions in Part IV.D.2.e. of the *Remand Order*. On December 21, 2004, the WyPSC, along with the OCA, filed with the FCC a *Joint Petition for Supplemental Federal Universal Service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier*. The FCC has failed to act on that petition.

The WyPSC has provided ample summary of the background, circumstances and history of the WyPSC's requests for additional federal universal service funds. Wyoming has taken all necessary steps to achieve reasonable comparability through its actions and the application of existing federal support.

As the Tenth Circuit said:

The issue is more than semantic. As discussed more fully below, this failure to consider fully the Act's principles as a whole further undermines the FCC's definition of "reasonably comparable" and the cost mechanism at issue in this case.⁵⁶

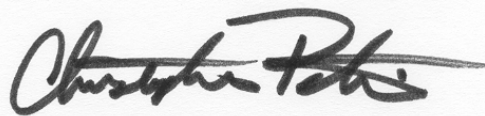
And;

The FCC urges that it is justified in defining "sufficient" solely in terms of § 254(b)(3) because "in general the purpose of [the federal non-rural high-cost support] mechanism is to provide enough federal support to enable states to achieve the reasonable comparability of rural and urban rates." FCC Br. at 61. This explanation is patently unpersuasive. We are troubled by the Commission's seeming suggestion that other principles, including affordability, do not underlie federal non-rural support mechanisms. Moreover, the Commission can point to no support in the Act or the legislative history that would permit such a construction. Consequently, we will not countenance it here.⁵⁷

The WYPSC looks forward to working with the FCC, the USAC and all other interested parties in maintaining the universal service goals and principles of Section 254 of the Act and in achieving residential rate comparability in Wyoming.

Respectfully submitted January 28, 2010.

FOR THE COMMISSION



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⁵⁶ *Qwest II* pp. 18-19

⁵⁷ *Qwest II* p. 19

Appendix A

1. December 13, 1999, representatives from the WyPSC met with FCC Commissioner Susan Ness and legal advisor Jordan Goldstein to discuss Wyoming's concerns about the results of the decision in CC 96-45 regarding universal service funding for non-rural carriers.
2. December 14, 1999, representatives from the WyPSC met with staff members of the Accounting Policy Division and the Common Carrier Bureau to discuss Wyoming's concerns about the results of the decision in CC 96-45 regarding universal service funding for non-rural carriers.
3. December 14, 1999, representatives from the WyPSC met with FCC Commissioner Harold Furchtgott-Roth and legal advisor Rebecca Benyon to discuss Wyoming's concerns about the results of the decision in CC 96-45 regarding universal service funding for non-rural carriers.
4. January 3, 2000: WyPSC filed a petition for reconsideration of the ninth report and order in CC Docket No. 96-45, seeking deaveraging of support to non-rural carriers at the zone level, or alternatively a rural state exemption.
5. January 12, 2000, representatives from the WyPSC met with legal advisor on common carrier issues, to FCC Chairman William Kenard, to discuss Wyoming's concerns about the results of the decision in CC 96-45 regarding universal service funding for non-rural carriers.
6. January 12, 2000, representatives from the WyPSC met with legal advisor on common carrier issues, to FCC Chairman William Kenard, to discuss Wyoming's concerns about the results of the decision in CC 96-45 regarding universal service funding for non-rural carriers.
7. January 21, 2000: WyPSC filed an ex parte regarding its petition for reconsideration of the Commission's ninth report and order in CC 96-45.
8. March 30, 2000: WyPSC filed a petition for waiver of the FCC's targeting rules in 47 CFR §§ 54.309 and 54.311.
9. December 19, 2001: WyPSC filed a supplemental petition for reconsideration.
10. December 2002: WyPSC filed comments on the Joint Board recommended decision, telling the Wyoming story again, describing lack of comparability or sufficiency.
11. April 25, 2002: WyPSC filed reply comments.
12. January 28, 2004: WyPSC filed intervention at Tenth Circuit in *Qwest v FCC*, Case No. 03-9617.
13. October 2004: WyPSC filed non-rural rate comparability certification, WyPSC reporting that rates were not comparable.
14. December 21, 2004: WyPSC and Wyoming Office of Consumer Advocate filed a joint petition for supplemental federal universal service funding for Qwest.
15. September 2005: WyPSC filed non-rural rate comparability certification reporting that rates were not comparable.
16. March 27, 2006: In the matter of Federal State Joint Board on Universal Service High Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. CC 96-45, WyPSC filed comments, again reminding the FCC of its *Qwest II* obligations.

17. December 20, 2007: WyPSC filed non-rural residential rate comparability certification, stating: “The WPSC pursued a remedy for this residential rate disparity through its request for further federal action, provided to state commissions in Part IV.D.2.e. of the Remand Order. On December 21, 2004, the WPSC, along with the Wyoming Office of Consumer Advocate, filed a Joint Petition for Supplemental Federal Universal Service Funds for Customers of Wyoming’s Non-Rural Incumbent Local Exchange Carrier (Joint Petition), with the FCC. In the Joint Petition, the WPSC provided a summary of the background, circumstances and history of the WyPSC’s request for additional federal universal service funds. The Joint Petition clearly demonstrates Wyoming has taken all necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the Joint Petition, the FCC opened a proceeding and established a pleading cycle on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WPSC. That proceeding is currently pending before the FCC.”
18. April 17, 2008: Joint comments of the Maine PUC, ConnectME Authority, WyPSC, and the Vermont DPS in the matter of the Joint Board Recommendation in the Matter of High Cost Support, WC Docket No. 05-337, CC Docket No. CC 96-45, were filed, stating at page 15: “This Commission also must determine what “reasonably comparable” means pursuant to the remand of its decision to *Qwest II*. (footnote omitted). The Commission has yet to issue an order responding to the Tenth Circuit Court of Appeals’ decision in *Qwest II*. It has now been over three years since the Court directed the Commission to revise key elements of its non-rural carrier high cost commenter support rules so that sufficient support would be provided to non-rural carriers. Consumers in rural states have been waiting too long for the Commission to correct its misinterpretation of the statute and provide sufficient support to those states. A legal finding as to what constitutes “reasonably comparable” rates and service and what constitutes “sufficient” support must be made before the Commission proceeds to make the functional and legal findings.”
19. June 2, 2008: -Joint reply comments of the Vermont PSB, Vermont DPS, Maine PUC, ConnectME Authority, and the WyPSC filed in the matter of the Joint Board Recommendation in the Matter of High Cost Support, WC Docket No. 05-337, CC Docket No. CC 96-45 stating at page 5: “The Vermont, Wyoming, and Maine state commissions, and commissions and related agencies from Nebraska, South Dakota, Kentucky, and West Virginia, have pressed the Commission to resolve the 10th Circuit remand issues for many months, and several carriers have requested waivers of universal service rules to provide company-specific fixes . . . It is imperative that the Commission adopt proper definitions and standards now to guide long term reform.”
20. September 29, 2008: WyPSC filed a residential rate comparability certification for Wyoming’s non-rural incumbent local exchange carrier serving in rural areas within Wyoming pursuant to 47 C.F.R. § 54.316 (CC Docket No. 96-45), stating: “Wyoming has taken all necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the Joint Petition, the FCC opened a proceeding and established a pleading cycle

- on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WYPSC. That proceeding is currently pending before the FCC.”
21. November 26, 2008: WyPSC filed comments in intercarrier compensation reform/universal service reform docket, reminding the FCC of its unfulfilled obligations to define comparability and sufficiency under *Qwest II*.
 22. December 22, 2008: WyPSC files reply comments in ICC/USF Reform docket jointly with Vermont, Maine, Iowa, and Nebraska.
 23. January 14, 2009, *Joint Petition for Writ of Mandamus* to the FCC filed with US Court of Appeals for the 10th Circuit, In re QWEST CORPORATION, MAINE PUBLIC UTILITIES COMMISSION, VERMONT PUBLIC SERVICE BOARD, AND WYOMING PUBLIC SERVICE COMMISSION, Petitioners, No. 09-9502.
 24. March 6, 2009, FCC files reply to *Joint Petition for Writ of Mandamus*: “The FCC has now agreed to complete this proceeding as follows. In order to refresh the record compiled in response to the 2005 NPRM, the Commission will release a notice of inquiry no later than April 8, 2009. It will then issue a further NPRM no later than December 15, 2009. After the Commission receives and reviews the comments submitted in response to the further NPRM, it will release a final order that responds to this Court’s remand no later than April 16, 2010.” page 2.
 25. March 20, 2009, Reply to US Court of Appeals for the 10th Circuit, In re QWEST CORPORATION, MAINE PUBLIC UTILITIES COMMISSION, VERMONT PUBLIC SERVICE BOARD, AND WYOMING PUBLIC SERVICE COMMISSION, Petitioners, No. 09-9502.
 26. April 2, 2002, WyPSC files an ex parte letter on the pending NOI on April 2, 2009.
 27. April 8, 2009, Before the Federal Communications Commission, In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, NOTICE OF INQUIRY, Released: April 8, 2009.
 28. May 8, 2009, WyPSC comments in NOI, WC Docket No. 05-337, CC 96-45.
 29. June 8, 2009, WyPSC reply comments in NOI, WC Docket No. 05-337, CC 96-45.
 30. September 18, 2009, WyPSC filed a residential rate comparability certification for Wyoming’s non-rural incumbent local exchange carrier serving in rural areas within Wyoming pursuant to 47 C.F.R. § 54.316 (CC Docket No. 96-45) – again stating that rates were not comparable.
 31. December 9, 2009, WyPSC staff made an ex parte communication with FCC staff to discuss the *Qwest II* matter, and to provide information concerning the unique characteristics of providing high cost rural universal service to customers served by Wyoming’s non-rural carrier.
 32. December 15, 2009, WyPSC staff filed an ex parte in GN Docket Nos. 09-47; 09-51; 09-137 and CC Docket No. 96-45 concerning the role of universal service and intercarrier compensation reform in the national broadband plan. Specifically, the WyPSC reminded the FCC that while broadband is an important goal, the existing universal service program must be improved to make sure that there is sufficient funding so that consumers in high-cost areas served by non-rural carriers may have access to reasonably comparable service and rates as urban customers.



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KATHLEEN "CINDY" LEWIS, Commissioner

CHRISTOPHER PETRIE

Secretary and Chief Counsel

June 12, 2009

To: Wyoming Eligible Telecommunications Carriers

**Re: WYOMING PUBLIC SERVICE COMMISSION 2009 ANNUAL
CERTIFICATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS**

PSC LETTER NUMBER 09-155

To Whom It May Concern:

This letter provides you an important reminder of upcoming deadlines, details concerning the Commission's expectations, and the process and schedule for 2009 Eligible Telecommunications Carrier (ETC) certifications. The federal Telecommunications Act of 1996 provides that ETCs may receive federal high cost universal service support.⁵⁸ Federal rules require the Commission to file annual certifications on or before October 1 each year. Timely certification ensures that federal high cost universal service support payments to Wyoming ETCs continue. In its annual certifications, the Commission must identify Wyoming ETCs eligible to receive federal support in the upcoming year. The Commission must also certify that each ETC will use the high cost support only for the provisioning, maintenance and upgrading of facilities and services for which support is intended.

To ensure the Commission can make timely annual certification filings with the FCC and USAC prior to October 1, 2009, annual certification information must be filed at the Commission by each ETC by **August 3, 2009**. Failure to submit a complete and accurate filing may preclude the Commission from submitting the necessary certification on behalf of your company to the appropriate federal agencies. Non-certification results in the loss of federal support funds for your company under federal law.

This is the same questionnaire used in 2008 with additional questions concerning Lifeline and Telephone Assistance programs, and a clarification of the loop count data

⁵⁸ 47 U.S.C. § 214(e) and §254.

information requirement.⁵⁹ Attachments to this letter give additional instructions. Referencing Commission Rule Section 514, Appendix A sets forth specific requirements for the information you must file with the Commission as part of your 2009 certification application. Where applicable, Appendix A is annotated with detailed clarification of Rule Section 514 (*noted in italics*) to clarify the type of information the Commission requires. Appendix B describes how annual ETC certifications submitted to the Commission for 2009 will be processed. Appendix C is the *Letter Order* regarding the Office of Consumer Advocate's (OCA) handling of confidential information in the Wyoming Universal Service Fund proceedings. The same process will be followed in the ETC proceeding. Appendix D is the Certification page that must be submitted with each company's ETC filing with the Commission. Appendix E is the schedule that the Commission intends to follow. Please submit your company's response no later than August 3, 2009.

Should you have any questions regarding this matter please contact Tom Wilson at (307) 777-5701 or Art Schmidt at (307) 777-5706.

FOR THE COMMISSION

CHRISTOPHER PETRIE
Chief Counsel

⁵⁹ See Appendix A, items (vii)(b) and (ix)(a)-(f).

APPENDIX A

INFORMATION REQUIREMENTS

Annual reporting requirements for all previously designated Eligible Telecommunications Carriers (ETCs) pursuant to the annual certification guidelines and standards set forth in Part 54 of Title 47 of the Code of Federal Regulations, as amended. (Reference Wyoming Public Service Commission Rule 514(b).)

- (i) The number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year and written submission detailing how it attempted to provide service to those potential customers, as set forth in 47 C.F.R. § 54.202(a)(1)(i).
- (ii) The number of complaints per 1,000 access lines or handsets.
- (iii) Written submission detailing how the carrier is complying with applicable Wyoming service quality standards, consumer protection rules and/or the Cellular Telecommunications and Internet Association (CTIA) Consumer Code (if applicable).
- (iv) Written submission detailing how the carrier is able to function in emergency situations as set forth in 47 C.F.R. § 54.202(a)(2).
- (v) Acknowledgment the Commission may require the carrier to provide customers with equal access to long distance carriers in the event no other ETC is providing equal access within the service area.
- (vi) The total amount of all federal high cost support received in the previous calendar year.
- (vii) For the previous calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs within the service areas in Wyoming where the carrier has been designated an ETC.

Expectations:

- a) *Provide high-cost investments and expenses related to provisioning, maintenance and upgrading of facilities, plant additions, and associated cost to provide:*
 - (A) *Voice grade access to the public switched network;*
 - (B) *Local usage;*
 - (C) *Dual tone multi-frequency signaling or its functional equivalent;*
 - (D) *Single party service;*
 - (E) *Access to emergency services;*

- (F) Access to operator services;
 - (G) Access to interexchange services;
 - (H) Access to directory assistance; and
 - (I) Toll limitation for qualifying low-income consumers.
- b) *For ETCs receiving support based on high-cost investment and expenses, provide a copy of the National Exchange Carrier Association Universal Service Fund 2008 Data Collection Form that your company completed and filed on July 31, 2009, pertaining to operations in Wyoming study area(s). Category 1.3 USF working loops (excluding Category 1.3 TWX loops) are compared for reasonableness to the number of access lines providing essential telecommunications service.*
 - c) *For all ETCs, provide a substantive description of your company's high-cost investment and expenses in Wyoming in 2008 related to the provisioning, maintenance and upgrading of facilities and services.*
 - d) *Provide a substantively detailed description of build-out projects, upgrades and installations applicable to any universal service products/offerings completed during 2008.*
 - i. *Describe the locations in the carrier's high-cost service territory where the projects are located, and the dollar figure associated with the investment or expenses entailed in the project; and*
 - ii. *Provide this high-cost investment and expense information using Form 1 and Form 2 (attached).*
 - e) *Provide a substantive description of the benefits to consumers that resulted from the 2008 high-cost investments and expenses.*
 - i. *Show in detail that the high-cost investments and expenses in Wyoming in 2008 were necessary to make quality services available in high-cost areas at just, reasonable, and affordable rates; and*
 - ii. *Show in detail that the high-cost investments and expenses in Wyoming in 2008 were necessary to provide the supported services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.*
 - f) *Describe or explain the circumstances that resulted in differences between your 2008 responses to Subsections 514(b)(xiv) and (xvi) and your response to Subsection 514(b)(vii) in 2009.*
- (viii) Documentation the carrier offers the nine supported services/functionalities, listed (A) through (I) below, throughout the service areas in Wyoming where the carrier has been designated an ETC.
- (A) Voice grade access to the public switched network;
 - (B) Local usage;
 - (C) Dual tone multi-frequency signaling or its functional equivalent;
 - (D) Single party service;

- (E) Access to emergency services;
 - (F) Access to operator services;
 - (G) Access to interexchange services;
 - (H) Access to directory assistance; and
 - (I) Toll limitation for qualifying low-income consumers.
- (ix) Documentation the carrier advertises the prices and availability of the Lifeline and Linkup programs in a manner designed to reach those likely to qualify for these programs, throughout the service areas for which the carrier has been designated an ETC. *In addition:*
- a) *Provide the number of Lifeline customers that your company served as of 12/31/2008.*
 - b) *Provide a detailed calculation of the discounted Lifeline rate that your Lifeline customers pay.*
 - c) *Provide evidence of the per-line Telephone Assistance Program surcharge your company puts on its customers' bills and state the amount of that surcharge.*
 - d) *Provide the total TAP and separately the total Lifeline subsidy provided in 2008 to qualified customers.*
 - e) *Provide the cumulative balance of your company's Lifeline account as of 12/31/2008.*
 - f) *Provide a copy of the information about DTV transition that was put in the monthly bills or bill notices received by Lifeline or Linkup customers, or as a monthly stand-alone mailer (e.g., postcard, brochure).*
 - g) *Provide documentation that this information was sent, for each monthly billing cycle beginning April 30, 2008, and concluding in March 2009, to notify Lifeline and Link Up customers about DTV Transition.*
- (x) A copy of the service agreement the carrier offers to its universal service customers, including all terms and conditions.
- (xi) Documentation and support the carrier is committed to, and has the capability to, provide its universal service product/offering throughout the service areas to all customers who make a reasonable request for service in Wyoming where the carrier has been designated an ETC.
- (xii) A detailed map of the service areas for which the carrier has been designated an ETC showing the location and the effective coverage area of each cellular tower. The commission may require such maps be submitted in a designated electronic format.
- (xiii) The total amount of all federal high cost support received year-to-date for the current calendar year.
- (xiv) For the current calendar year-to-date, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance,

upgrading, plant additions and associated infrastructure costs for any universal service products/offerings within the service areas in Wyoming where the carrier has been designated an ETC. This should include the carrier's plans and budgets for any build-out projects, upgrades and installations applicable to any universal service products/offerings not yet completed during the current calendar year.

Expectations:

- a) *Note: Documentation may not be construed as "assertions." "Documentation" requires actual documenting evidence.*
 - b) *The relationship between Subsections 514(b)(vii) and (xvi) is expected to be close. Explain the difference(s) between previous build-out plans and what was actually done subsequently for the purpose of certifying that federal funds are being used for the purpose for which they are intended.*
 - c) *Provide a substantive description of the benefits to consumers resulting from the year-to-date high-cost investments and expenses to show that the high-cost investments and expenses serve the purpose for which the federal support is intended.*
 - i. *Show in detail that year-to-date high-cost investments and expenses in Wyoming were necessary to make quality services available in high-cost areas at just, reasonable, and affordable rates; and*
 - ii. *Show in detail that the high-cost investments and expenses in Wyoming were necessary to provide access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.*
- (xv) Copies of the previous and current year's reports required by 47 C.F.R. § 54.307(b) and (c) to be filed by the carrier with the USAC applicable to the service areas in Wyoming where the carrier is designated an ETC.
- (xvi) A three-year service quality improvement plan report, including maps detailing its progress towards meeting its plan targets, an explanation of how much federal universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the exchange level, study area level or some other similar service area level description.

Expectations:

- a) *This question is intended to be answered by both incumbent and competitive ETCs and should not be read as exclusively applying to wireless service providers.*

- b) *Respond to this question even if your company bill-credits the federal support it receives.*
 - c) *Provide a substantive description of the benefits to consumers expected from planned future high-cost investments and expenses.*
 - i. *Show in detail that the high-cost investments and expenses in Wyoming will be necessary to make quality services available in high-cost areas at just, reasonable, and affordable rates.*
 - d) *Show in detail that the high-cost investments and expenses in Wyoming will be necessary to provide access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.*
- (xvii) Detailed information on any outage, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect (i) at least ten percent of the end users served in a designated service area; or (ii) a 911 special facility, as defined in 47 CFR 4.5(e). Specifically, the ETC's annual report must include information detailing:
- A. The date and time of onset of the outage;
 - B. A brief description of the outage and its resolution;
 - C. The particular services affected;
 - D. The geographic areas affected by the outage;
 - E. Steps taken to prevent a similar situation in the future; and
 - F. The number of customers affected.

Form 1
2008 Plant Investment

High-cost investments related to provision, maintenance and upgrade of facilities, and plant additions used to provide: A) voice grade access to the public switched network, B) local usage; C) DTMF or functional equivalent; D) single party service; E) Access to emergency services; F) access to operator services; G) access to interexchange services; H) access to directory assistance; and I) toll limitation for qualifying low income customers.

Account	Description	Additions (dollars)
2002	Plant Held for Future Use	
2003	Plant Under Construction S/T	
3004	Plant Under Construction L/T	
2005	Plant Adjustments	
2006	Non-operating plant	
2110	Land General Support	
2210	Central Office Switching	
2220	Operator Systems	
2230	Central Office Transmission	
2310	Information Origination/Termination	
2410	Cable and Wire Facilities	
2680	Tangible Assets	
2690	Intangible Assets	

Form 2
2008 Operating Expenses

High-cost expenses related to provision, maintenance and upgrade of facilities, and plant additions used to provide: A) voice grade access to the public switched network, B) local usage; C) DTMF or functional equivalent; D) single party service; E) Access to emergency services; F) access to operator services; G) access to interexchange services; H) access to directory assistance; and I) toll limitation for qualifying low income customers.

Account	Description	Total Wyoming Expenses
6110	Network Support	
6120	General Support	
6210	Central Office Switching	
6220	Operator Systems	
6230	Central Office Transmission	
6310	Information Origination/Termination	
6410	Cable and Wire Facilities	
6510	Other Plant and Equipment	
6530	Network Operations	
6540	Access	
6560	Depreciation and Amortization	
6610	Marketing	
6620	Customer Operations	
6710	Executive Planning	
6720	General Administrative	

APPENDIX B

PROCESS

The Commission has determined that annual ETC certification submissions required by Section 514 of the Commission's Rules will be processed as explained below.

The Commission will assign a docket number to each ETC annual certification matter. Docketing ETC annual certification submissions will allow us to track filings more efficiently and will make interested parties aware of the submissions through the Commission's normal distribution practice.

Docketing ETC annual certification submissions will allow the OCA to act as a party if they so choose and to have the same access to submitted information as the Commission. See W.S. § 37-2-402(a)(i) and (b). However, the OCA shall handle confidential information in the same manner as it was handled in Docket No. 90072-28-XO-08, and listed in the *Letter Order* attached in Appendix C. While this will create an opportunity for OCA to access annual ETC certification submissions and present comments, these matters will not be "contested" proceedings.

ETCs will be required to observe Section 120 of the Commission's rules to receive confidential treatment of appropriate portions of their annual ETC certification submissions.

The obligation to submit all information necessary for the Commission to perform an adequate review prior to making annual certification decisions is not altered by this policy. All elements of Section 514 of the Rules, including its reporting requirements, continue to apply to the annual certification process.

No telecommunications company may view or obtain copies of confidential filings made by other companies in these proceedings (or the identifiable data derived therefrom UNDER ANY CIRCUMSTANCES). This does not preclude companies from showing this information voluntarily.

APPENDIX C



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HARRY IVEY

Commission Administrator

CHRISTOPHER PETRIE

Secretary and Chief Counsel

Ivan Williams
Office of Consumer Advocate
2515 Warren Ave., Suite 304
Cheyenne, WY 82001

Re: IN THE MATTER OF THE FUNDING REQUIREMENT AND PROPOSED ASSESSMENT
FACTOR FOR THE JULY 2008 TO JUNE 2009 FISCAL YEAR OF THE WYOMING
UNIVERSAL SERVICE FUND - DOCKET NO. 90072-28-XO-08 (RECORD NO. 11690)

Letter Order **(Issued April 15, 2008)**

Dear Mr. Williams:

This matter is before the Wyoming Public Service Commission (Commission) upon the Office of Consumer Advocate's (OCA), request for access to certain confidential information in the Wyoming Universal Service Fund (WUSF) Manager's Report.

At the Commission's open meeting on April 9, 2008, Mr. Ivan Williams, counsel for OCA, advised the Commission that the OCA wished to review certain confidential information relating to the WUSF July 2008 – June 2009 Manager's Report. Mr. Williams stated that on March 31, 2008, he sent a letter to Ms. Blair Bales, Commission Counsel, formally requesting a copy of the WUSF Manager's Report which was to be submitted on April 1, 2008. Mr. Williams received a copy of that report and issued an acknowledgement letter on April 2, 2008. In that acknowledgment letter, Mr. Williams requested additional source data and work papers, similar to that which was received by OCA for last year's WUSF Manager's Report, to be reviewed by Denise Parrish, Deputy Administrator of the OCA, who would provide input to the Commission.

After discussion at the Commission's open meeting on April 9, 2008, it was determined that the OCA would have access to the confidential source data and work papers related to the WUSF Manager's Report. The following conditions are to be observed by OCA with respect to confidential materials in this and future proceedings related to the determination of the WUSF funding requirement assessment:

1. After receiving any confidential material in any form, OCA will acknowledge receipt of such confidential material by letter, including a description of each document received;

2. OCA will take appropriate measures to prevent unauthorized disclosure of confidential material;
3. OCA will be free to use any electronic documents that are provided as they deem necessary and may create working copies;
4. At the conclusion of the proceeding, OCA will destroy or return all copies of confidential materials, regardless of format, to the Commission.
5. OCA will provide Commission staff an opportunity to confirm that all electronic copies are deleted or destroyed; and
6. OCA will provide a final letter to the Commission listing what confidential documents were returned or destroyed and an inventory of any original working documents created and retained by OCA.

IT IS THEREFORE ORDERED:

1. Pursuant to open meeting action taken on April 9, 2008, the Office of Consumer Advocate will have access to the requested additional confidential information for its review of the Wyoming Universal Service Fund Manager's Report, under the conditions set forth above.
2. This *Letter Order* is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, this 15th day of April 2008.

BY ORDER OF THE COMMISSION:

(SEAL)

CHRISTOPHER PETRIE
Secretary and Chief Counsel

APPENDIX D

Certification

The certification must be submitted by a company officer, stating the date and place of its execution; and that it is so certified or declared under the laws of the state of Wyoming. The certification or declaration may be in substantially the following form:

**WYOMING ELIGIBLE TELECOMMUNICATIONS CARRIER
CERTIFICATION APPLICATION**

VERIFICATION

"I _____ (name), the _____ (company employee title) of _____ (company name), after being duly sworn upon my oath, depose and state that I certify (or declare), that the information contained on the foregoing 2009 application for certification as an eligible telecommunications carrier, including the attachments thereto, is true and correct, to the best of my knowledge, information and belief, and that federal universal service support received shall be used only for the provision, maintenance, and upgrading of facilities for which the support is intended.

.....
(Date and Place)

.....
(Signature)

STATE OF _____

COUNTY OF _____

On this ____ day of ____, 2009, before me, a notary public in and for the said state and county, personally appeared before me _____ (name of person), the _____ (company employee title) of _____ (company name), to me known to be the identical person named in and who executed the 2009 eligible telecommunications carrier certification application, and acknowledged that he/she executed the 2009 eligible telecommunications carrier certification application as the voluntary act of the person and the company.

Witness my hand and official seal.

Notary Public
My Commission Expires _____

APPENDIX E

SCHEDULE

June, 12, 2009	Commission letter issued with instructions for filing 2008 ETC certification application
July 2009	Commission staff follow-up contacts/Q&A with conference call if necessary
August 3, 2009	Completed ETC Certification Applications Due to be filed at the Commission
September tbd, 2009	Commission Open Meeting to consider ETC certification applications
September tbd, 2009	Second Commission Open Meeting for Further Consideration (if necessary)
October 1, 2009	Commission Annual ETC Certification Letter Due to FCC and USAC.